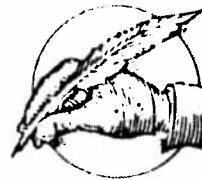


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Georto, Inc. v. William Gateman, et al.

Transcript of the Testimony of:

Lauren McKinlay

November 18, 2005

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Lauren McKinlay 11-18-2005
Georto, Inc. v. William Gateman, et al.

1

UNITED STATES DISTRICT COURT

2

3

DISTRICT OF MASSACHUSETTS

4

C.A. NO.: 04-11730NG

5 GEORTO, INC.,

6 Plaintiff,

7 VS

8 WILLIAM GATEMAN, INDIVIDUALLY

9 And as TRUSTEE OF

10 200 UNION STREET REALTY TRUST

11 Defendant, Third Party Plaintiff, and
12 Third Party Defendant

13 In counterclaim,

14 ROBERTS CORPORATION,

15 Third Party Defendant, and Third
16 Party Plaintiff in Counterclaim

17

18

19 DEPOSITION OF LAUREN MCKINLAY

20 TAKEN ON NOVEMBER 18TH, 2005

21

22

23

24

Lauren McKinlay 11-18-2005
Georto, Inc. v. William Gateman, et al.

1 DEPOSITION OF Lauren McKinlay, taken
 2 on behalf of the Defendant, pursuant to the
 3 applicable provisions of the Massachusetts Rules
 4 of Civil Procedure, before Tara L. Wosny, Notary
 5 Public and Certified Shorthand Reporter within
 6 and for the Commonwealth of Massachusetts, at
 7 the Offices of James S. Robbins on November
 8 18th, 2005, at 10:00 a.m., as follows:

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4
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 3 BY: Kristina A. Engberg, Esquire
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1 PROCEEDINGS

2
3 LAUREN MCKINLAY, the witness,
4 having been duly cautioned and sworn, testified
5 upon her oath as follows:

6 MR. ROBBINS: Counsel have
7 discussed and agreed to continue to use the
8 stipulations with regard to the deposition that
9 we have used previously; that is to say,
10 reserving all objections, except as to form and
11 any motions to strike, until the time of trial.

12 I would like the client to read and
13 sign the deposition.

14 Do you have any problem with that?

15 MR. BRAVERMAN: No.

16 MR. ROBBINS: Do you want to
17 waive the notary, but read and sign.

18 MR. BRAVERMAN: That's fine.

19 EXAMINATION BY MR. ROBBINS:

20 Q. Let me just briefly indicate to you
21 that, as I'm sure your counsel will have said,
22 that when I say I'd like you to read and sign,
23 that means that you will have an opportunity to
24 get a copy of the transcript of today's

6

1 MR. BRAVERMAN: Because other
2 than that, I don't need a copy of it.

3 MR. ROBBINS: Okay. perfectly
4 fine.

5 Could all counsel introduce
6 themselves so that we have a party list.

7 MR. KERESTER: Dale Kester
8 representing plaintiff, Georto, Inc.

9 MISS ENGBERG: Kristina
10 Engberg representing third-party defendants,
11 Roberts Corporation.

12 MR. BRAVERMAN: Jonathan
13 Braverman representing the witness and Goldman
14 Environmental Consultants.

15 MR. ROBBINS: Okay. Anything
16 I've left out that people want me to do?

17 MR. BRAVERMAN: No.

18 BY MR. ROBBINS:

19 Q. Okay. Would you please state your full
20 name?

21 A. Lauren McKinlay.

22 Q. How do you spell your last name?

23 A. M-C-K-I-N-L-A-Y.

24 Q. Okay. And at some point in time did

7

9

1 questions and answers. And you will have an
2 opportunity to review it to help ensure that the
3 stenographer accurately took down what you
4 said.

5 A. Okay.

6 Q. So if you said red and she wrote
7 incorrectly bed, you have a chance to indicate
8 that on a sheet and after reading it and
9 making such corrections as there may have been,
10 you sign that sheet and return it to me.

11 A. Okay.

12 MR. ROBBINS: Can we also
13 agree that if it's not done within 30 days of
14 receipt of this, that it will be treated --

15 MR. BRAVERMAN: It will be
16 deemed read and signed.

17 MR. ROBBINS: Deemed read and
18 signed.

19 MR. BRAVERMAN: That's fine.
20 Although I would like a copy of the transcript
21 sent to me so that we have a trail.

22 MR. ROBBINS: Okay. Do you
23 want me to send the copy to you, and then you'll
24 get it into her hands?

1 you go by the name of Lauren Maigret?

2 A. Yes.

3 Q. Is Maigret your maiden name or former
4 name?

5 A. Yes, it is.

6 Q. When did you start to use the name
7 McKinlay?

8 A. September 18th, 2004.

9 Q. Miss McKinlay, I'm going to ask you
10 some questions, and the other lawyers may ask
11 some when I'm finished, about subjects
12 concerning work that you did on behalf of
13 Goldman Environmental Consultants at a piece of
14 property in Lynn, generally referred to as 200
15 Union Ave.

16 MR. ROBBINS: Union Street, I
17 believe. Thank you.

18 Q. What I'm asking you is for what you
19 remember, what you know, not your guesses, not
20 your hunches, but what you know of your own
21 first-hand knowledge, okay?

22 A. Yes.

23 Q. None of us are served by guessing or
24 filling ins that we all sometimes do. If you

3 (Pages 6 to 9)

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10	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	12 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24
11	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	13 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

4 (Pages 10 to 13)

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14

16

1 misunderstand you?
 2 A. It indicates that you are qualified for
 3 a list of regulations that it covers. It's up
 4 to the individual -- it's up to an individual to
 5 determine if, according to a certain oath that
 6 you have to sign, if you have the knowledge to
 7 sign off on something with that certificate.

8 You have to feel comfortable that
 9 you have the knowledge to say this is -- I'm not
 10 sure how to explain it definitively.

11 Q. Do you want to give me an example?
 12 A. For instance, it covers OSHA regs, DOT
 13 regs, a wide range of regulations. If you're
 14 principal -- if your job and experience only
 15 deals with OSHA regs, you wouldn't be able to
 16 sign off on, say, that these -- that you have
 17 knowledge of the DOT regs?

18 Q. And the decision as to whether you can,
 19 quote, sign off that you know the DOT regs is
 20 personal, it's based on your sense of what you
 21 know?

22 A. Exactly, your experience.

23 Q. And your experience. So but as far as
 24 the Institute of Hazardous Materials, once they

1 Q. When was the exam?
 2 A. Either April or May of 2005. I don't
 3 recall.

4 Q. Okay. Am I correct you haven't had a
 5 deposition taken before?

6 A. Correct.

7 Q. Okay. I don't want you to -- within
 8 the limits of what is humanly possible, I don't
 9 want you to feel nervous more than you need to.
 10 Nobody is here to yell at you, jump at you or
 11 anything. Nobody is saying that you did
 12 anything wrong or bad, okay? We just want to
 13 find out some information about what happened,
 14 okay?

15 A. That's fine.

16 Q. All right. How long is the exam that
 17 you sat for?

18 A. I believe it was a four-hour period.

19 Q. Okay. And is this a take-home exam or
 20 did you have to go to some location to do this?

21 A. It's a proctored exam.

22 Q. So you went someplace and there was an
 23 independent person monitoring your exam? Is
 24 that what you mean by proctored?

15

17

1 give you the certificate, they're saying that
 2 you're familiar with certain sets of regulations
 3 and it's up to you which types of regulations
 4 you want to represent to the world that you're
 5 qualified to deal with?

6 A. Correct, more or less.

7 Q. Okay. Tell me what is the less?

8 A. No, that would be a correct statement.

9 Q. So the regs involves OSHA, right? The
 10 regulations that this Hazardous Materials
 11 Institute of materials and the certificate
 12 affirms your knowledge of the OSHA regulations;
 13 is that correct, isn't that what you said?

14 A. There's a broad range of regulations.

15 I wouldn't attempt to name them all because I
 16 know I would miss some of the regulations that
 17 it covers.

18 Q. Well, you'll pardon me, but I do need
 19 to know what your background is. When did you
 20 get the certificate?

21 A. In June of 2005.

22 Q. Okay. And you sat for an exam before
 23 you got it, right?

24 A. Correct.

1 A. Correct.

2 Q. Okay. Did you have some course of
 3 study that led you to become ready to take this
 4 exam?

5 A. I took a review course.

6 Q. What does a review course mean, or what
 7 do you mean by a review course?

8 A. There is a course offered that's
 9 sponsored by the Academy of Hazardous Materials
 10 Management that broadly covers all of the
 11 regulations that encompass the CHMM
 12 certification so that you can get a handle of
 13 what regulations will be covered in the exam.

14 Q. Okay. And where is this Academy of
 15 Hazardous Management located?

16 A. I don't recall.

17 Q. Did you go someplace for this course?

18 A. I did but not to the academy.

19 Q. Okay. Where did you go for the course?

20 A. I believe it's called the Safety
 21 Building in Braintree, Massachusetts.

22 Q. Who sponsored this particular course at
 23 the Braintree building or the safety building in
 24 Braintree?

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18	1 A. I believe it was sponsored by the 2 Academy of Hazardous Management. 3 Q. And the purpose of this course was to 4 familiarize you with the various kinds of 5 regulations that pertain to hazardous materials? 6 A. Government regulations that pertain to 7 hazardous materials. The purpose of it was to 8 basically outline what regulations are covered 9 under the CHMM certification. 10 Q. Okay. And so basically you took this 11 course when? You sat for the exam you thought 12 in April or May, so approximately when did you 13 go to this review course? 14 A. A couple of months before the exam. 15 Q. Okay. And what did the course -- how 16 many hours did the course consist of or how many 17 days if you were there for a period of days? 18 A. I believe it was four, eight-hour days. 19 Q. Okay. And going back now to what were 20 the sets of regulations that you were reviewing 21 for purposes of taking the test, what were the 22 sets of regulations? You mentioned something 23 with OSHA and DOT regulations? 24 A. It's such a wide spectrum. There's	20	1 A. Yes. 2 Q. What is the requirement? 3 A. There's two levels of certification. 4 One, I believe, requires five years of practical 5 experience and the other requires seven years of 6 practical experience. 7 Q. And which level did you qualify for? 8 A. The masters level, which is the seven 9 years. 10 Q. Okay. And which were the seven years 11 that you presented as your experience? 12 A. From 1998 to 2005. 13 Q. Okay. Let me try to clarify something 14 that I'm a little confused by. The certificate 15 indicates apparently that you've had in your 16 case seven years of some kind of field 17 experience working with hazardous materials, is 18 that it, or just you have been working for 19 someplace that sends you out in the field for 20 seven years? 21 A. I don't recall the specific -- I don't 22 recall the specifics of the application where 23 you had to demonstrate -- I don't recall what 24 they deemed as practical experiences.
19	1 numerous regulations that it covers. They're 2 all federal regulations. 3 Q. So first of all, these are all federal 4 regulations? 5 A. Correct. 6 Q. Okay. In other words, there are no 7 state or Commonwealth or municipal regulations 8 included in this test? 9 A. No, they're federal regulations. 10 Q. Okay. So among the groups of federal 11 regulations, what were the names, even if it's 12 not the entire set of that agency's regulations, 13 what are the names of the agencies who 14 propounded the regulations that you were 15 learning about? 16 A. The ones that I recall are OSHA, DOT, 17 NPDES. I don't recall the proper names of some 18 of them, but regulations that deal with nuclear 19 materials, hazardous -- like, transportation and 20 storage and proper labeling of hazardous 21 materials. Those are only a few of them. I 22 don't recall all of them. 23 Q. Does getting this certificate require 24 you to have any experience in the field?	21	1 Q. And the thing I was not clear earlier 2 about is, these various federal regulations says 3 that successfully getting the certificate says 4 to the world that you've demonstrated some level 5 of understanding of at least the OSHA, the DOT, 6 the NPDES, nuclear materials and the 7 transportation and labeling of hazardous 8 materials; is that right, that you have some 9 knowledge of those regulations? 10 A. Correct. 11 Q. Okay. And it also indicates in your 12 case that you've had seven years of some kind of 13 practical experience, but you don't what the 14 practical experience is really supposed to 15 consist of. As you sit here today, you don't 16 remember? 17 A. Right, I don't recall. 18 Q. Okay. Then you said something about 19 what sounded to me like it was left up to your 20 own judgment as to whether to represent yourself 21 to the public as knowing certain of these 22 things, these regulations, and that's what I'm a 23 little confused about. 24 A. You sign an oath basically stating that

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22

24

1 you won't certify certain regulations unless you
 2 have what they deem the practical experience in
 3 that particular field dealing with those
 4 regulations.

5 Q. Okay. So it's not like you have to
 6 take another test on the regulations. It's that
 7 you have to get practical experience with regard
 8 to certain of these regulations that you named
 9 in order to abide by your oath before
 10 representing yourself to be knowledgeable?

11 A. Correct.

12 Q. Okay. Following your graduation in –
 13 let me backup. Your study of geology at
 14 Hartwick -- is Hartwick an engineering school by
 15 any chance?

16 A. No.

17 Q. So it's a liberal arts college?

18 A. Yes.

19 Q. Four years?

20 A. Yes.

21 Q. And as a geology major, how many
 22 courses did you take that pertained to your
 23 geology major?

24 A. I don't recall.

1 them?

2 A. I oversaw assessment and investigations
 3 of contaminated or potentially contaminated
 4 properties.

5 Q. Okay. And where were these properties
 6 located, was it in the state of Connecticut or
 7 were they in other places?

8 A. Mainly Connecticut.

9 Q. Okay. Now, when you started work for
 10 them, did you have any specific training in the
 11 investigation of contaminated properties and the
 12 assessment of contaminated properties?

13 A. No.

14 Q. Okay. Were you being supervised by
 15 somebody at that company?

16 A. Yes.

17 Q. So my question would be, when you would
 18 go out – Strike that.

19 How did you go about doing those
 20 duties on a typical work site in the
 21 approximately two years you were at Fuss &
 22 O'Neill?

23 A. When I first started at Fuss & O'Neill,
 24 I would mainly oversee field investigations. So

23

25

1 Q. Was it more than five?

2 A. Yes.

3 Q. More than 10?

4 A. Yes.

5 Q. What type of geology was your study in?

6 A. A general geology degree.

7 Q. After college did you get some work?

8 Did you start working someplace?

9 A. Yes.

10 Q. Where did you first come to work?

11 A. Fuss & O'Neill, Incorporated.

12 Q. And where are they located?

13 A. Their corporate office is in
 14 Manchester, Connecticut.

15 Q. And was that the office that you worked
 16 out of?

17 A. Yes.

18 Q. And what kind of work is that, Fuss &
 19 O'Neill?

20 A. They're engineering and environmental
 21 consultants.

22 Q. And how long did you work for them?

23 A. Just under two years.

24 Q. And what kind of work did you do for

1 I would be on site either conducting the
 2 sampling or overseeing other companies that were
 3 conducting the work.

4 Q. Okay. Did I get the company name
 5 wrong, is it Fuss & O'Neill?

6 A. That's correct.

7 Q. How did you know what to do in terms of
 8 going to the site and directing other people or
 9 taking samplings yourself?

10 A. Initially somebody else would be out on
 11 the site with me training me.

12 Q. Okay.

13 A. Until the company felt that I was
 14 knowledgeable enough to conduct the sampling on
 15 my own.

16 Q. And how long was it before they let you
 17 conduct samplings on your own?

18 A. Less than six months.

19 Q. Okay. And what types of hazardous
 20 materials were you out there to assess and
 21 investigate and supervise the work of?

22 A. A large range, a very large range of
 23 oil and hazardous materials.

24 Q. Oil. What else? A large range doesn't

7 (Pages 22 to 25)

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26	1 help me a lot. I need to know specifically what 2 you were out there testing for and looking for 3 and supervising during the time that you were at 4 Fuss & O'Neill? 5 A. I could name the ones that I recall, 6 but they wouldn't be all of them. 7 Q. Okay. You don't get points off because 8 you can't remember all of them, but you get good 9 credit for giving me what you do remember. 10 So would you tell me which ones you 11 do remember even if there are some that you 12 can't remember? 13 A. Metals, volatiles, petroleum 14 constituents, solvents. That's what I recall. 15 Q. Okay. Was any of your work at that 16 time did it involve the demolition of buildings, 17 testing on sites on which buildings had been 18 recently demolished? And, again, I'm just 19 focusing on the two years that you were with the 20 Fuss & O'Neill people? 21 A. I don't recall. 22 Q. While you were at Fuss & O'Neill, were 23 you ever involved with the supervision of 24 asbestos removal?	28	1 A. To determine lithology at sites. 2 Q. What is lithology? 3 A. The types of soils and bedrocks. 4 Q. Okay. And how did that contribute to 5 the hazardous waste work on a particular site, 6 how was that involved with the hazardous waste 7 testing on the site? 8 A. Lithology will impact the way that 9 contaminants travel. 10 Q. When you started work for Goldman 11 Environmental Consultants in the year 2000, do 12 you know approximately when in 2000 you started? 13 A. July. 14 Q. Okay. What assignments were you given 15 initially? 16 A. Both overseeing assessment and 17 investigation and remediation of sites and 18 conducting the Phase 1 investigations, 21Es. 19 Q. Now, 21E refers to what, Phase 1, 21E 20 refers to what? 21 A. 21E refers to a Phase 1 based on ASTM 22 standards. 23 Q. 21E, do you know what that number and 24 letter refer to?
27	1 A. No. 2 Q. Following the time you left Fuss & 3 O'Neill, I take it you left them sometime in 4 year 2000, 2001? 5 A. 2000. 6 Q. And did you obtain a new job 7 A. Yes. 8 Q. Where was that? 9 A. Goldman Environmental Consultants. 10 Q. And what was your new job with them? 11 A. Project manager, slash, geologist. 12 Q. Let me make sure I've exhausted this. 13 The work that you did for the approximately two 14 years for Fuss & O'Neill was to oversee 15 assessments and investigations with regard to at 16 least the hazardous materials you mentioned as 17 they were examined on the site; is that right? 18 A. Correct. 19 Q. Okay. Did you do any geology work? 20 A. Yes. 21 Q. What did you do? 22 A. Rock soil strata and bedrock strata. 23 Q. And what was the purpose of doing that, 24 please?	29	1 A. I don't. 2 Q. How do you know what is included in a 3 Phase 1, 21E examination? 4 A. There are standards, ASTM 1527. 5 Q. Standards for what? What is the 6 subject matter? What are we talking about? 7 A. They identify the components that make 8 up the Phase 1. 9 Q. You realize that since you haven't told 10 me what Phase 1 is we're in a little bit of a 11 circle here. ASTM stands for what? 12 A. I believe it's Association of Standard 13 Testing Lithology. 14 Q. Okay. Well, three of the letters – 15 the first letter of those words match, but the 16 last letter, lithology doesn't match up with the 17 letter "M." 18 A. Methodology. 19 MR. BRAVERMAN: Why don't I 20 confer with the witness. 21 MR. ROBBINS: I was going to 22 suggest that. 23 (Brief break taken). 24 BY MR. ROBBINS:

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1 Q. Okay, so I'd like to pick up where we
2 were. We were talking about Phase 1, the Phase
3 1, 21E project. What is your understanding of
4 what a -- Strike that.

5 Do you know if a Phase 1, 21E test
6 or project is related to requirements for the
7 Commonwealth of Massachusetts or for the federal
8 government or both?

9 A. The 21E is related to Massachusetts
10 regulations.

11 Q. Okay. And what are the kinds of things
12 that you -- let me back up. What are the things
13 that are tested for or looked for in a Phase 1,
14 21E project as far as you understand it?

15 A. Typically a Phase 1 there's no
16 subsurface investigations conducted. It's
17 typically only observations and review of files
18 pertinent to the site to determine current and
19 historic uses of the site.

20 Q. Anything else as far as your
21 understanding to kind of flush out what these
22 are?

23 A. Based on the current and historic uses
24 of the site you determine if there's the

1 also.
2 Q. Okay. What is the purpose of the 21E
3 report?

4 A. To determine if OHM is present or could
5 potentially be present at the site?

6 Q. So to determine if OHM, which you've
7 said is oil and hazardous materials is or are
8 present or could potentially be present where,
9 in the soil, on the site?

10 A. Either on the site or in the subsurface
11 of the site.

12 Q. Now, you said before that no subsurface
13 investigations were part of a 21E report and
14 investigation?

15 A. Correct.

16 Q. And now you're saying, and I just don't
17 understand what you mean, that the oil and
18 hazardous materials could potentially be present
19 on the site or subsurface of the site.

20 I don't understand how if you're
21 not supposed to be doing subsurface
22 investigations as part of this, how do you
23 respond to the potential presence or actual
24 presence in the subsurface of the site?

1 presence or the potential to be presence of OHM
2 at the site.

3 Q. Okay. Anything else that you want to
4 describe right now?

5 A. That's a broad description of what a
6 Phase 1 is.

7 Q. Okay. OHM, what do those letters stand
8 for?

9 A. Oil and hazardous material.

10 Q. Is it fair to say that a Phase 1, 21E
11 test -- would you call it a test or a program or
12 how would you describe it? I need some words.
13 How do we describe what the job is?

14 A. A report.

15 Q. A report?

16 A. A report which summarizes your
17 observations made.

18 Q. Okay. A report. Am I correct in
19 understanding that the thrust of a 21E is to
20 make sure there's no hazardous materials or oil
21 buried in the soil at the site?

22 MR. KERESTER: Objection to
23 form.

24 MR. BRAVERMAN: I object,

1 A. You come to a conclusion that the
2 potential exists based on historic uses or
3 current uses that may have used OHM in their
4 processes.

5 Q. So if I understand you, there is no
6 actual, physical testing of a subsurface in a
7 Phase 1, but you examine historical uses of the
8 property and/or present uses of the property and
9 say there could be potential problems because
10 they had used these materials before?

11 A. Correct.

12 Q. Okay. But the limit is, you're limited
13 to basically historical and surface
14 observational data as far as subsurface
15 conditions?

16 A. And a review of any public records
17 pertinent to the site.

18 Q. Okay. Who buys a 21E report from
19 Goldman?

20 MR. BRAVERMAN: I object.

21 Q. Why does anyone request a 21E report
22 from Goldman typically?

23 MR. KERESTER: Objection.

24 A. A Phase 1 is typically conducted in

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34	36
1 conjunction with a real estate transaction.	1 Q. Okay. Do you perform Phase 1 tests on
2 Q. Okay. In order to assure the parties	2 behalf of Goldman Environmental?
3 as to the condition or the presence of any OHM?	3 MR. BRAVERMAN: I object.
4 MR. BRAVERMAN: I object.	4 MR. KERESTER: I also object.
5 Q. Is that right?	5 Q. Do you perform Phase 1 investigations
6 MR. KERESTER: Objection to	6 on behalf of Goldman Environmental?
7 form.	7 A. Yes.
8 MR. BRAVERMAN: I'll help	8 Q. What do you do? What are the steps
9 you. I'm objecting to the word, "assure."	9 that you are required to take on -- per Goldman
10 MR. ROBBINS: Okay. Let's see	10 to complete a 2 Phase 1 test?
11 if I can be more careful.	11 MR. KERESTER: Objection.
12 MR. BRAVERMAN: I don't	12 MR. BRAVERMAN: Objection.
13 normally like to do that.	13 A. A site inspection, review of state and
14 MR. ROBBINS: You mean object.	14 local files, a review of historical documents
15 MR. BRAVERMAN: Well, I don't	15 related to the site, interviews with current
16 like to object if I don't have to, but I don't	16 owners or operator's of the site. Those are the
17 usually like to state the clarification of my	17 major ones that I recall. There are many more.
18 objection.	18 Q. What are the minor ones?
19 MR. ROBBINS: It's nothing	19 A. Determining what appears to be the
20 toxic here. I'm just trying to get a handle on	20 hydrologic radiant of ground water, observing
21 this thing.	21 abutting properties. There is many more. I'm
22 BY MR. ROBBINS:	22 just -- I can't think of them off the top of my
23 Q. So typically this occurs during or as	23 head.
24 part of a real estate transaction. How are	24 Q. Are you currently conducting any Phase
35	37
1 these 21E tests conducted?	1 1 studies?
2 MR. KERESTER: Objection to	2 A. No.
3 form.	3 Q. When is the last time you did a Phase 1
4 MR. BRAVERMAN: I object.	4 study?
5 MR. ROBBINS: I think if we're	5 A. Approximately three to five months ago.
6 reserving to the objection to form and you have	6 Q. Okay. Since coming to work for Goldman
7 an objection, you owe it to tell me what the	7 in 2000, July of 2000, how many Phase 1 studies
8 objection is so that I can have a chance to	8 have you either participated -- Strike that.
9 correct it.	9 How many Phase 1 studies have you
10 MR. KERESTER: I don't think	10 conducted?
11 I'm obligated to, but I'd be happy to tell you.	11 A. I'd say over 100 probably.
12 My objection to that question was to the	12 Q. Having conducted over 100, you're
13 characterization of the use of the word "test."	13 telling me today that there are other steps
14 (Brief break taken).	14 other than the six that you've listed, but you
15 BY MR. ROBBINS:	15 don't remember them; is that right?
16 Q. Do you know where the term Phase 1	16 A. I don't recall them.
17 comes from?	17 Q. But there are other steps besides the
18 A. I don't recall.	18 six that you've given me?
19 Q. Do you know if 21E -- your reference to	19 A. Yes.
20 the term 21E refers to a Massachusetts, a	20 Q. Are the digging of test pits -- are you
21 Commonwealth of Massachusetts regulation of some	21 familiar with that term by the way?
22 sort or statute of some sort?	22 A. Yes.
23 A. The 21 -- the statute 21E refers to	23 Q. Is the digging of tests pits any part
24 Massachusetts regulations.	24 of a Phase 1 study as you understand it?

10 (Pages 34 to 37)

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	38		40
1	A. No.	1	purpose of that relative to the Phase 1 study?
2	Q. What state and local files do you	2	A. To determine if they have on record any
3	review when you conduct a Phase 1 test?	3	incidents relating to oil or hazardous
4	MR. KERESTER: Objection.	4	materials.
5	Q. I'm sorry, Phase 1 study.	5	Q. Okay. The Building Department records
6	A. The local files depends upon the town.	6	or files?
7	Different towns have different names for	7	A. To determine the history of the site,
8	different agencies. The Fire Department, Board	8	when buildings were constructed or demolished,
9	of Health, Building Department and a clerk's	9	past owners, occupants.
10	office if the town has one.	10	Q. The clerk's office records or files?
11	As far as Massachusetts or state	11	A. To determine if they have any
12	files, there would be files maintained by the	12	documentation on underground storage tanks or
13	Massachusetts Department of Environmental	13	above ground storage tanks.
14	Protection.	14	Q. Massachusetts DEP files?
15	Q. Is that it?	15	A. If there's any spill incidents or state
16	A. Those are the typical offices.	16	sites either at the site or within a certain
17	Occasionally a flood map or something or some	17	distance of the site. They would be assigned a
18	other item that's specific to the Phase 1 might	18	release tracking number, which you would then
19	be kept in a different office.	19	review files pertinent to that release tracking
20	Q. Okay. You said review historical	20	number.
21	documents. What other historical documents are	21	Q. And the release tracking number has to
22	there that you review in a Phase 1 study?	22	do with what?
23	A. If they're available, you'd review	23	A. It's a way for the state to track the
24	Sanborn atlases and directories, historic	24	site through their system.
	39		41
1	directories.	1	Q. Do they track sites -- all properties
2	Q. And the purpose of looking through the	2	or just properties where there is a spill or a
3	Sanborn atlases or historic directories is what?	3	hazardous waste problem?
4	A. To determine historic occupants of the	4	A. The release tracking number would be
5	site. If STs were formally used at the site,	5	assigned -- there's different instances that it
6	they're sometimes shown on the Sanborn atlases.	6	would be assigned. If there's -- there's
7	Q. Okay. Again, the purposes to go back	7	different -- there's a two hour -- there's
8	to the state and local files that I asked you	8	criteria that constitutes the owner or operator
9	about. With regard to the Fire Department, what	9	of the site. It requires them to notify the DEP
10	is the purpose concerning a Phase 1 study of	10	of any release.
11	reviewing Fire Department records or files?	11	There are certain standards and if
12	A. To determine if they have any records	12	they exceed those standards, they're obligated
13	of current or historic use of USTs or ASTs at	13	to report to the state.
14	the site.	14	Q. You also indicated in your Phase 1
15	Q. Okay. I need you to explain what is a	15	study that you do interview the owners or
16	UST?	16	operators of the site; is that correct?
17	A. An underground storage tank.	17	A. That's correct.
18	Q. Okay. And an AST?	18	Q. What is the purpose of that?
19	A. An above ground storage tank.	19	A. To determine the present use of the
20	Q. And sometimes Fire Department records	20	site and determine any operations that are
21	would note these, is that what you're saying?	21	currently conducted at the site, and sometimes
22	A. Correct. Some fire departments	22	they can provide you with historic operations of
23	maintain records.	23	the site if they've been there for a while.
24	Q. The Board of Health, what is the	24	Q. The interview, the purpose of the

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42	1 interview -- the ultimate purpose of the 2 interview is to try to glean information, am I 3 correct, from the owner or operator relative to 4 any OHM problems on the site? 5 MR. KERESTER: Objection to 6 form. 7 A. That would be only one of many purposes 8 for interviewing them. 9 Q. Would you give me all of the purposes 10 that you understand for interviewing the owner 11 or operator of the property? 12 A. To determine the current use and 13 operations of the site, if they have knowledge 14 of historic owners or operations conducted at 15 the site, to determine if they have any 16 knowledge of historic use of OHM at the site, to 17 determine how their water -- how their water is 18 supplied, if it's through a portable well or a 19 public supply, what types of wastes are 20 currently historically generated at the site, if 21 they know or are aware of any improper disposal 22 or use of OHM at the site, to determine if they 23 know if there's any activity or use limitations 24 on the site.	44	1 Q. Where would you look to determine what 2 the term "hazardous materials" consists of to 3 determine if a particular item was part of the 4 hazardous materials? 5 A. I don't recall. 6 Q. Do you understand my question? 7 A. Are you looking for a particular 8 document that you would refer to? 9 Q. Yes, I would. 10 A. I don't recall. 11 Q. Okay. Is there someplace that you go 12 to know what constitutes a hazardous material? 13 A. Yes. 14 Q. Okay. Where would you go? 15 A. I don't recall. 16 Q. Are you aware of whether there's a 17 definition of hazardous materials in any 18 regulations or statutes of the Commonwealth of 19 Massachusetts? 20 A. Can you repeat the question? 21 Q. Do you know whether or not there is any 22 definition of hazardous materials contained in 23 any of the regulations or statutes of the 24 Commonwealth of Massachusetts?
43	1 To determine if there's ever been 2 any subsurface investigations conducted at the 3 site, to determine if there's other purposes. 4 Those are the key ones that come to the top of 5 my head at the moment. 6 Q. I'd like to know of any other 7 purposes. You've done 100 of these, or more 8 than a 100? 9 A. I don't recall any other purposes. 10 Q. But there are other purposes, you just 11 don't remember them? 12 A. Correct. 13 Q. Is one of the purposes to determine the 14 -- Strike that. 15 What is your overall purpose with 16 regard to doing a Phase 1 study, the overall 17 goal is to identify what? 18 A. Determine if there's any contamination 19 at the site or the potential for contamination 20 to be present at the site. 21 Q. And contamination, is that a technical 22 word, do you know? Contamination, does that 23 refer to certain specific things? 24 A. Oil and hazardous materials.	45	1 A. Yes. 2 Q. Okay. So someplace in those rules or 3 statutes, the Commonwealth has defined the term 4 hazardous materials? 5 A. Yes. 6 Q. Do you know if that same term is 7 defined by any federal documents, rules, 8 statutes or regulations? 9 A. Yes. 10 Q. Okay. When you certify that a site is 11 free of oil and hazardous materials, that's part 12 of what you do at the end of your study if 13 that's the condition that you find it? 14 MR. BRAVERMAN: I object. 15 Q. Let me give you a better question. 16 Let's assume you find a site to be free of oil 17 and hazardous materials, and even accepting the 18 facts and understanding that you're not doing 19 any subsurface testing, do you make some sort of 20 a report to either Goldman or to the ultimate 21 client? 22 A. Correct. 23 Q. Okay. And you say I found -- I didn't 24 do any subsurface testing, but from the studying

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1 that I did do -- and you've described the
 2 various things that you do -- I don't see any
 3 oil or hazardous materials?

4 A. And make a conclusion saying based on
 5 our findings, it's likely that hazardous or oil
 6 is not present, is not present at the site.

7 Q. So your overall purpose is to ascertain
 8 from your studies whether OHM exists on the site
 9 or probably exists on the site?

10 MR. KERESTER: Objection to
 11 form.

12 MR. BRAVERMAN: Objection.

13 A. Can we go back to the question before
 14 that?

15 Q. Sure.

16 A. In a Phase 1 it would be if there's any
 17 recognized environmental conditions.

18 Q. What does that mean, what are you
 19 saying?

20 A. It's a specific term used in the ASTM
 21 standards specific to Phase 1.

22 Q. And what is the phrase or term that
 23 you're using?

24 A. Recognized environmental condition.

1 A. I'm not sure that I do.

2 Q. Okay. You do a Phase 1 study to
 3 determine the presence or absence, or potential
 4 presence or absence of OHM. Would you agree
 5 with that?

6 A. Yes.

7 Q. Okay. Then you said, can I expand my
 8 answer, and you gave me a new answer called
 9 recognized environmental conditions.

10 A. Correct.

11 Q. Okay. I'm trying to understand whether
 12 recognized environmental conditions is as you
 13 understand it, a term broader than the presence
 14 or -- the environmental conditions are broader
 15 than OHM?

16 MR. KERESTER: Objection to
 17 form.

18 MR. BRAVERMAN: I object.

19 Q. So does recognized environmental
 20 conditions that you're supposed to study when
 21 you do the Phase 1 study, is that supposed to
 22 include anything but OHM?

23 MR. KERESTER: Objection.

24 MR. BRAVERMAN: I object.

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1 Q. And what does that phrase refer to, is
 2 it recognize or recognized?

3 A. I believe it's recognized, E-D.

4 Q. And what is your understanding of that
 5 term, what that means?

6 A. Conditions either current or historic
 7 that resulted in or potentially could have
 8 resulted in contamination at the site.

9 Q. Contamination by OHM?

10 MR. KERESTER: Objection.

11 Q. Contamination by what?

12 A. Of hazardous materials.

13 Q. And oil? And/or oil?

14 A. And/or oil.

15 Q. So that's OHM?

16 A. Yes.

17 Q. Okay. What I'm trying to find out is,
 18 is it your understanding of this phrase,
 19 recognized environmental conditions, does that
 20 include environmental conditions beyond the
 21 presence of OHM?

22 MR. KERESTER: Objection to
 23 form.

24 Q. Do you understand my question?

1 A. An example of a recognized
 2 environmental condition would be the historic
 3 use of a site as a dry cleaners. The historic
 4 documents that you review wouldn't necessarily
 5 say that trichloroethylene or
 6 tetrachloroethylene were historically used at
 7 the site, but those chemicals are typically
 8 associated with a dry cleaners. So the dry
 9 cleaners itself would constitute a recognized
 10 environmental condition.

11 Q. And the condition, if you will, the
 12 risk of the condition is the presence of in your
 13 example the dry cleaners, the presence of
 14 trichloroethylene?

15 A. Correct, the potential for the historic
 16 use or disposal of that at the site.

17 Q. So if a dry cleaner was there, they
 18 might have used trichloroethylene and stuck it
 19 in the ground, right?

20 A. Yes.

21 Q. Okay. Trichloroethylene is considered
 22 a hazardous material under the definitions as
 23 you understand OHM?

24 A. Yes.

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50 <p>1 Q. So ultimately any of the environmental 2 conditions that you are reporting about in your 3 Phase 1 study boil down to their actual or 4 potential inclusion of oil or hazardous 5 materials on the site? 6 MR. KERESTER: Objection to 7 form. 8 A. I believe it would be a broader base 9 than simply OHM. 10 Q. Okay. What else is included besides 11 OHM? 12 A. If there's been any filling activities 13 on the site, that would constitute an 14 environmental condition, a recognized 15 environmental condition. 16 Q. What is a filling activity, what does 17 that mean? 18 A. If material not natural to the site had 19 been brought on to the site and buried. 20 Q. What kind of material? 21 A. I would say any materials other than 22 clean fill material, clean dirt. 23 Q. Well, I need -- what is -- 24 interesting. So you're saying that the Phase 1</p>	52 <p>1 A. Yes. 2 Q. Contamination. I thought that we 3 defined contamination an hour and a half ago as 4 oil and hazardous materials? 5 A. Yes. 6 Q. Okay. So am I correct that the 7 contamination potential, the stuff in the fill 8 that could cause the potential problem would be 9 oil and hazardous materials? 10 A. Correct. 11 Q. Okay. Phase 1 does not include, am I 12 correct, about understanding this from your 13 testimony, any soil testing per say? 14 A. Correct. 15 Q. Is there such a thing as a Phase 2 16 report? 17 A. Yes. 18 Q. Is there any physical testing done in a 19 Phase 2 report that you understand? 20 A. Typically there is. 21 Q. Yes? 22 A. Yes, typically. 23 Q. You also determine the hydrologic 24 radiant of ground water you indicated before in</p>
51 <p>1 study that you do goes beyond determining the 2 presence or potential of oil or hazardous 3 materials and also addresses the question of the 4 nature of the fill at the site beyond whether it 5 contains or potentially contains oil or 6 hazardous materials, is that what you're saying? 7 A. It identifies if there's any known 8 historic fills at the site. 9 Q. But what is the nature -- let's assume 10 there were some known fillings. What are you 11 looking for to say, okay, there's a problem 12 here. What would be the problem, or what would 13 be the thing that you would want to determine 14 about that fill that you'd want to comment about 15 in your study? 16 A. Filling activities have occurred at the 17 site. Whether you know the source of the fill 18 material or not, the potential exists that what 19 has been brought on the site could cause 20 contamination at the site. 21 Q. Okay. So your concern about the fill 22 would be that it could potentially cause 23 contamination at the site. Did I quote you 24 right?</p>	53 <p>1 a Phase 1 study; is that right? 2 A. To the best that you can. It won't be 3 definitive, but based on topography or USGS 4 maps, you can get a pretty good handle on which 5 way the direction of ground water is flowing. 6 Q. But no physical testing is performed to 7 determine this? 8 A. Correct. 9 Q. Okay. And you indicated that you 10 observe abutting properties. What is it that 11 you are looking to observe for purposes of a 12 Phase 1 study? 13 A. You would observe the abutting 14 properties to see if there's any evidence of OHM 15 at those sites that could potentially migrate on 16 the site that you're conducting the Phase 1 for. 17 Q. Okay. And your observations -- Strike 18 that. 19 Does the work that you do with 20 regard to abutting properties also include the 21 other items that you said you do on the primary 22 property, namely a site inspection or review of 23 state and local files or review of the 24 historical documents, interviews with owners,</p>

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1	determination of hydrologic radiants and	1	supervisory or oversight functions when they
2	observing the property itself?	2	retained an abatement company to perform work on
3	A. No.	3	a particular location?
4	Q. Okay. So with regard to abutting	4	A. Their involvement would be limited to
5	property, what are the steps that you take in	5	overseeing the company that conducts the work,
6	completing that part of your Phase 1 study?	6	making arrangements for access to the site.
7	A. You make observations of the abutting	7	Those types of matters. They wouldn't
8	properties from the site that you're conducting	8	physically be involved in the testing or
9	the Phase 1 on from the public roadway, but you	9	abatement process.
10	don't actually, physically go onto the abutting	10	Actually, just to clarify that, the
11	properties.	11	only time that we would analyze or potentially
12	Q. Okay. So you're talking about visual	12	analyze for asbestos would be through the
13	observations?	13	collection of ground water or soil samples. We
14	A. Of the grounds and of the abutting	14	would send them to a certified lab, but we don't
15	property.	15	collect building materials or anything of that
16	Q. What else?	16	nature for asbestos analysis.
17	A. If there is a state listed site, you	17	Q. So I'm a little confused. You collect
18	would review and have a release tracking	18	samples of what? If it's not building
19	number. You would review that file at the	19	materials, samples of what?
20	Massachusetts Department of Environmental	20	A. Soil or ground water.
21	Protection.	21	Q. As opposed to a ceiling tile let's say?
22	Q. That's of this abutting property?	22	A. Correct. Unless the ceiling tile would
23	A. Correct.	23	be incorporated into a soil matrix, a film
24	Q. Okay.	24	matrix that you might be digging or drilling
	55		57
1	A. And you would look at the Fire	1	through for subsurface activities.
2	Department and clerk's office to see if there's	2	Q. So not in a Phase 1 study, but
3	any records of underground or above ground	3	sometimes Goldman would do digging of test pits
4	storage tanks relative to those abutting	4	on a particular site, subsurface digging in
5	properties?	5	other words?
6	Q. Okay. Anything else?	6	A. Correct.
7	A. No.	7	Q. And then it might take samples from
8	Q. So it's fair to say that the study of	8	that and have them analyzed someplace?
9	the abutting property does a more limited study	9	A. By a certified laboratory.
10	than the one on the private property?	10	Q. And doing that kind of digging of pits,
11	A. Yes, very much.	11	would that normally be part of any particular
12	Q. Are you qualified -- Strike that.	12	kind of a study that Goldman does, or is it just
13	Have you ever conducted or	13	somebody says to Goldman, come on in. We want
14	supervised any asbestos removal work?	14	you to dig some pits in the ground?
15	A. No.	15	A. Typically you wouldn't sample for
16	Q. Does Goldman get involved in any way	16	asbestos unless somebody hired you to do so, or
17	with asbestos problems on a site?	17	there was reason to believe based on historic
18	A. Yes.	18	use or operation of the site that asbestos could
19	Q. How do they get involved when they do?	19	potentially be present in the subsurface.
20	A. They'll contract a company certified	20	Q. But it's not part of a Phase 1 study?
21	with the knowledge of asbestos to either collect	21	A. No, it's not.
22	samples or conduct an abatement, if that's	22	Q. Is it typically part of a Phase 2
23	required.	23	study?
24	Q. Okay. And does Goldman perform any	24	A. It could be part of a Phase 2 study.

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1 Q. I should have asked you this earlier.	1 (Exhibit No. 55 received and
2 Have you ever conducted or participated in a	2 Marked for identification).
3 Phase 2 study?	3 Q. I've taken some documents and photo
4 A. Yes.	4 copied them from this Exhibit 55, and I'd like
5 Q. Approximately how many times would that	5 to ask you some questions about some of them.
6 be since you started work for Goldman?	6 When did you first become aware of
7 A. Over 100.	7 a Phase 1 study to be done at what is called
8 Q. So you consider yourself pretty	8 190-200 Union Street?
9 familiar with that kind of work?	9 A. April or May of 2002.
10 A. Yes.	10 Q. How did you become aware of it?
11 Q. And with Phase 1 work, too?	11 A. I don't recall.
12 A. Correct.	12 Q. Did somebody speak to you, did your
13 Q. Did you participate in a Phase 1 study	13 supervisor speak to you, did somebody hire up at
14 at a property in Lynn, Massachusetts called 200	14 Goldman speak to you and say we have a project
15 Union Street?	15 that we want you to work on?
16 A. Yes.	16 A. I don't recall the exact details.
17 MR. BRAVERMAN: Before we move	17 Q. When was the first time that you went
18 into the specific project, would this be a good	18 to the site?
19 time for a short break?	19 A. May 2nd, 2002.
20 MR. ROBBINS: Absolutely.	20 Q. Okay. And your intention of going to
21 (Lunch Recess taken).	21 the site was to conduct a Phase 1 study; is that
22 BY MR. ROBBINS:	22 correct?
23 Q. I'm going to show you a pile of	23 A. To conduct a site inspection of the
24 documents that I'll represent are exactly how I	24 property that I was doing a Phase 1 study on.
59	61
1 received them in this box from counsel, and	1 Q. So the overall purpose was a Phase 1
2 appear to have an affidavit on the front of	2 study, the specific purpose was a site
3 them.	3 inspection?
4 And while we haven't numbered the	4 A. Correct.
5 pages and so forth, I'd like to ask you is that	5 Q. And the point of a Phase 1 study on
6 your signature on the sheet?	6 this property was to determine the presence of
7 A. Yes.	7 oil or hazardous materials?
8 Q. Okay.	8 MR. KERESTER: Objection to
9 A. A copy of it.	9 form.
10 Q. Right. And your intention in signing	10 MR. BRAVERMAN: I object.
11 your name on that sheet was what, why did you	11 MR. KERESTER: I'm objecting
12 sign it?	12 in part to the leading nature of the question.
13 A. To indicate that I had copied all of	13 MR. ROBBINS: She already said
14 the files pertinent to 200 Union Street in Lynn	14 that -- okay. I'll let that sit.
15 and that they're copies of documents produced by	15 Q. You can answer the question.
16 Goldman Consultants, Inc.	16 A. Could you repeat the question?
17 Q. And these are true copies of the	17 MR. ROBBINS: Thank you for
18 business records of Goldman that you've selected	18 letting me know what your objection was.
19 as relevant to or concerning the 200 Union	19 (Last question read back).
20 Street?	20 Q. I said the purpose -- I'm going to
21 A. Correct.	21 amend the question slightly.
22 Q. Okay.	22 Your purpose and Goldman's purpose
23 MR. ROBBINS: So why don't we	23 for conducting a Phase 1 study on this property
24 put a sticker on that.	24 was to determine, was it not, the presence or

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1	potential presence of oil and/or other hazardous	1	materials, the improper disposal of solid
2	materials?	2	waste. Is that what you're adding?
3	MR. KERESTER: Objection.	3	A. Correct.
4	MR. BRAVERMAN: I object.	4	Q. And presumably by default, the improper
5	A. The purpose of the Phase 1 was to	5	disposal of oil or hazardous materials?
6	determine if there was any recognized	6	MR. KERESTER: Objection to
7	environmental conditions as defined by the ASDM	7	form,
8	standard.	8	A. Well, the improper disposal of solid
9	Q. And did we not decide in discussing	9	waste on its own, regardless of whether there's
10	this this morning that the recognized	10	contaminant present or not would constitute a
11	environmental conditions phrase, in fact, means	11	recognized environmental condition.
12	under this, potential presence of oil and/or	12	Q. I'm sorry, would you say that again? I
13	hazardous materials?	13	didn't follow you.
14	MR. KERESTER: Objection.	14	A. The improper disposal of solid waste
15	MR. BRAVERMAN: I object.	15	would constitute a recognized environmental
16	Q. I thought that's what you told me this	16	condition regardless of if that solid waste
17	morning.	17	contained oil or hazardous materials.
18	MR. KERESTER: Objection.	18	Q. Okay. Now, I haven't heard you use the
19	MR. BRAVERMAN: I object.	19	term solid waste before right now; so would you
20	A. Could you repeat the question?	20	tell me what you mean by solid waste?
21	Q. Let me give you a different question.	21	A. Solid waste could include garbage,
22	We're going to go back over this until I get it	22	trash, building materials. I believe it could
23	clear.	23	include asphalt and concrete, although I'm not a
24	What is your understanding of the	24	specialist when it comes to solid waste
	63		65
1	phrase, recognized environmental conditions as	1	regulations.
2	defined by ASM 1527? What does it mean to you?	2	Q. Can solid waste include anything else?
3	MR. BRAVERMAN: I object.	3	A. Yes.
4	A. A condition past or present or an	4	Q. What else?
5	activity that has occurred at the site, past or	5	A. I don't recall.
6	present, that has the potential to contaminate	6	Q. Are there regulations or statutes in
7	the site.	7	the Commonwealth of Massachusetts that define
8	Q. Contaminate the site with what?	8	for you what solid waste consists of?
9	A. Oil and hazardous materials. It could	9	A. Yes.
10	also encompass improper disposal of solid waste	10	Q. Where would you find those?
11	or oil and hazardous materials.	11	A. In the Massachusetts Code of
12	Q. Does that finish your answer? Have you	12	Regulations. I don't recall the specific
13	had enough time to finish it?	13	portion of the regs that I would look to.
14	A. Yes.	14	Q. And the identification of solid waste
15	Q. So your answer is finished?	15	disposal is part of your Phase 1 study; is that
16	A. Yes.	16	correct?
17	Q. So conditions past or present or an	17	A. How is it or is it?
18	activity past or present that actually has the	18	Q. Is it?
19	potential to contaminate the site with oil	19	A. Yes.
20	and/or hazardous materials. Did I get that part	20	Q. Is that part of a Phase 1 study?
21	right so far? I'm not finished, but so far am I	21	A. Yes.
22	right with that answer?	22	Q. Okay. What are the steps that you take
23	A. Yes.	23	to identify when you do a Phase 1 study the
24	Q. And in addition to oil and hazardous	24	presence or absence of solid waste or the

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66	68
1 potential presence or absence of solid waste on 2 the site?	1 Q. Then you said asphalt and concrete, but 2 you said you weren't an expert in the area of 3 asphalt or concrete. I didn't quite remember 4 what you said.
3 A. Questioning people, either operators or 4 owners who are familiar with the site as to how 5 solid waste generated at the site is disposed, 6 walking over the site to see if there's any 7 unusual mounds that might be associated with 8 filling activities. Also, reviewing files 9 maintained by Mass. DEP. If the site had been a 10 solid waste landfill at one point, it would be 11 identified in those files.	5 A. I don't recall if asphalt and concrete 6 are included in the Massachusetts regulations. 7 I'd have to refer to the regulations.
12 Q. Any other steps?	8 Q. So you don't know whether they're 9 included or not?
13 A. Those would be the steps that I would 14 take.	10 A. Correct.
15 Q. Now, when you gave me a list of what 16 you understood or what you remembered as solid 17 waste items, you mentioned garbage. When you 18 say garbage, what do you mean by garbage?	11 Q. Okay. And then you said there are 12 others that you don't remember?
19 A. Wrappers, boxes, things that you would 20 generate and throw out that you would no longer 21 have use for.	13 A. Correct.
22 Q. That could be anything from a car to a 23 piece of food or all sorts of things. That's a 24 very broad definition, or is it your intention	14 Q. Are there other types of items?
67	15 A. Yes.
1 to include garbage essentially as anything that 2 could be thrown out?	16 Q. Do you know if bricks are among or 17 under Massachusetts regulations defined as solid 18 waste?
3 A. I would say that garbage would be a 4 broad definition and would include anything that 5 could be thrown out.	19 A. I don't recall.
6 Q. So that's your understanding of what 7 garbage means under this definition of solid 8 waste in Massachusetts?	20 Q. By whom was Goldman retained by this 21 project at this address?
9 A. Yes.	22 MR. KERESTER: Objection to 23 form.
10 Q. How about trash, what is your 11 understanding of the definition of trash under 12 the Massachusetts regulations?	24 A. I believe the client was Envirotest.
13 A. I would say it would be the same as 14 garbage.	69
15 Q. Okay. So trash and garbage is 16 essentially the same?	1 Q. And what is Envirotest?
17 A. Yes.	2 A. I'm not certain.
18 Q. Building materials, what is that? What 19 is your understanding of Massachusetts 20 definition for that?	3 Q. Is it a business?
21 A. It could be wood, metal, plaster, 22 concrete, drywall, floor tiles, carpet, anything 23 that you would use in the construction of a 24 building.	4 A. I believe it's a laboratory, but I'm 5 not 100 percent on that. I know it's a 6 business, but I don't know.
	7 Q. Have you ever dealt with any 8 individuals from Envirotest in your work?
	9 A. Not other than on this project.
	10 Q. Okay. But yes at this project?
	11 A. Yes.
	12 Q. Do you remember the names of any of the 13 people at this project from Envirotest with whom 14 you had any contact?
	15 A. I don't recall without looking at who 16 the report is addressed to.
	17 Q. Okay. What were you told your 18 responsibilities were on this project?
	19 A. I don't recall.
	20 Q. Did someone tell you to do a Phase 1 21 study?
	22 A. I don't remember.
	23 Q. Do you know who the ultimate client 24 was? In other words, the owner of the piece of

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1 property that you were doing the report on?
 2 A. Bill Gateman was the owner of the site.
 3 Q. Okay. Are you familiar with the name
 4 of a business called Family Dollar?
 5 A. Not in the context of this project.
 6 Q. In what context?
 7 A. As a business. I know there's a
 8 business named Family Dollar.
 9 Q. So someone whom you don't remember
 10 gives you the assignment to do a Phase 1 study
 11 at this 200 Union Street address in Lynn back in
 12 approximately April or May of 2001. I think you
 13 said?
 14 MR. KERESTER: I believe she
 15 said 2002.
 16 A. Yes, 2002.
 17 Q. Have I got the story right so far,
 18 someone gave you an assignment to do a Phase 1?
 19 A. Correct.
 20 Q. Okay. The first time you went to the
 21 site, were you by yourself or were you with
 22 someone else?
 23 A. I was by myself.
 24 Q. What did you do when you got there?

1 this project or this location?
 2 A. No. Those aren't just specific to the
 3 site inspection. Those are notes that I took
 4 during all aspects of the Phase 1.
 5 Q. Were you there for any other purpose
 6 other than a Phase 1?
 7 A. Those include notes that I would have
 8 taken from the town offices and things like
 9 that.
 10 Q. You would have because you were
 11 conducting a Phase 1 study?
 12 A. Yes.
 13 Q. So whatever the source of the
 14 information is that you put into these notes, it
 15 was all part of the same project, a Phase 1
 16 study; is that correct?
 17 A. Yes.
 18 Q. Okay. And subject to perhaps some
 19 correction, this is all of them, subject to
 20 finding a missing sheet or whatnot?
 21 MR. BRAVERMAN: I don't know
 22 whether you would consider those notes, anything
 23 written in her hand pertaining to the Phase 1
 24 study.

71

73

1 A. I don't recall all of the things that I
 2 did when I was there, but I recall walking the
 3 site and interviewing Mr. Gateman based on my
 4 field notes. I don't recall the actual
 5 conversation itself.
 6 Q. Okay. When you got there I was about
 7 to ask you, what is it -- do you keep a notebook
 8 of the work that you do in connection with the
 9 Phase 1?
 10 A. I would take notes, but not in a
 11 specific notebook.
 12 Q. You would take notes. You would write
 13 notes down on a piece of paper?
 14 A. Correct.
 15 Q. Do I have those pieces of paper of the
 16 notes that you wrote in Exhibit 55?
 17 A. Yes.
 18 Q. Would you find them for me?
 19 A. (Witness complying).
 20 Q. These sheets that you're handing me,
 21 these are all of your notes?
 22 A. Relative to the Phase 1.
 23 Q. Right. And are there notes that you've
 24 made relative to anything besides the Phase 1 at

1 (Exhibit No. 55A received and
 2 Marked for identification).
 3 Q. This initial form on top of Exhibit
 4 55A, is that a Goldman form that's used for
 5 Phase 1s?
 6 A. Yes.
 7 Q. You've seen that form before?
 8 A. Yes.
 9 Q. And that's your handwriting on that
 10 form, right?
 11 A. Yes.
 12 Q. In other words, your handwriting is
 13 someplace on every document that's in this 55A,
 14 right?
 15 A. At some point, yes.
 16 Q. Okay. I'd like to ask you -- actually,
 17 let me pull this out so you can look at that.
 18 This first form in 55A has at the
 19 top the name of site inspection form. Do you
 20 see that?
 21 A. Yes.
 22 Q. Inspected by LMM?
 23 A. Correct.
 24 Q. That's you?

19 (Pages 70 to 73)

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74 <p>1 A. Yes. 2 Q. And this was done on May 2, '02? 3 A. Yes. 4 Q. Okay. And it was raining I take it? 5 A. Yes. 6 Q. On this you've written various things, 7 including on site history. You say, "Bill 8 Gateman stated commercial store different times 9 in the past 50 years." A little line up to 10 "Gateman has owned property since 1997." 11 Did I read that right? 12 A. It states, "Bill Gateman stated 13 commercial store approximately past 50 years." 14 Q. Okay. 15 A. "Has owned property since 1997." 16 Q. Okay. Now, I can't read this. There's 17 some writing just below that. On my copy it 18 doesn't show up. Can you tell me what the 19 writing below that is? 20 A. No. 21 Q. Did you see there's some writing 22 there? It's too faint. 23 A. No. 24 Q. So when you wrote that down there,</p>	76 <p>1 Q. Okay. What other kind of people were 2 working there? What was going on with these 3 other people? 4 A. I don't recall. 5 Q. So you recall there were some people 6 there, but you don't recall what they were 7 doing? 8 A. I recall there was heavy equipment on 9 the site. I recall that they were operating, 10 but I don't recall the exact activities that 11 they were doing. 12 Q. And when you got there, would you 13 describe what the site looked like and in 14 particular -- describe what the site looked 15 like. 16 A. I don't recall all the details, but I 17 remember there being no vegetation, debris 18 piles, a couple of pieces of heavy equipment on 19 the site. That's what I recall. 20 Q. Okay. Did you see any trucks? 21 A. I don't recall. 22 Q. Was the building standing at all or had 23 it all been leveled down, knocked down? 24 A. The basement foundation was remaining.</p>
75 <p>1 "Bill Gateman stated," that's your notes or are 2 you quoting him? In other words, is that an 3 exact quote of the words that he said? 4 A. I don't recall. 5 Q. Okay. But it's your notes summarizing 6 at least what he said? 7 A. Yes. 8 Q. Okay. Now, down at the bottom it says 9 current use. Do you see that? 10 A. Yes. 11 Q. Would you read what you've written in 12 there, please? 13 A. "Vacant building has been demolished -- 14 currently demolition debris piles at the site -- 15 per Mr. Gateman, all will be removed/disposed. 16 Former basement areas currently being filled 17 in." 18 Q. When you were there, were there any 19 other people besides you and Mr. Gateman working 20 at the property? 21 A. Yes. 22 Q. Were these the asbestos abatement 23 people? 24 A. No.</p>	77 <p>1 Q. Did you see any building above the 2 basement foundation level? 3 A. No. 4 Q. So was the level of the site all 5 leveled up to the street level? 6 MR. KERESTER: Objection to 7 form. 8 A. No. 9 Q. What was the topography or elevation on 10 the site when you got there on May 2 that you 11 observed? 12 A. They were very irregular. I mean, 13 there was a drop off into a basement area. 14 Q. Anything else? 15 A. That's what I recall. 16 Q. Was any part of it at the level of the 17 street? 18 A. Within a foot of the street I would 19 say. 20 Q. Okay. And there was some area that 21 went down to a basement level you said? 22 A. Yes. 23 Q. Okay. And then when you said there 24 were debris piles, what do you mean by debris</p>

20 (Pages 74 to 77)

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1 piles?	78
2 A. I don't recall specifics of the debris	80
3 piles.	
4 Q. So do you remember any of the items	
5 that composed these debris piles?	
6 A. Not unless I refer to the notes that I	
7 took on that day.	
8 Q. Okay. So I assume that those notes	
9 would be part of 55A?	
10 A. Yes.	
11 Q. Okay. Do you keep private notes or	
12 personal notes with regard to your work	
13 assignments?	
14 A. No.	
15 Q. Okay. So no private diary or log with	
16 notes?	
17 A. No.	
18 Q. So everything you've written in your	
19 hand with regard to gathering information and in	
20 general with regard to this project is in this	
21 55A as far as you know?	
22 A. Yes.	
23 Q. So could you find notes in there?	
24 Would you look through those and tell me if you	
A. On the second page of the second	
document in Exhibit 55A. And just to orient me	
-- I may have it.	
There's some notes that look like	
they're on lined paper with the date of 5/2/02	
on the upper left.	
A. Yes, site inspection.	
Q. And this is, "12 o'clock meet Bill	
Gatemann."	
A. Correct, on the second page of that.	
Q. Thank you.	
A. About midway down it says, "current	
conditions of site."	
Q. Okay.	
A. Indicates metal and debris piles.	
Q. Okay. So that refreshes you that there	
was some metal in the debris pile?	
A. Correct.	
Q. Anything else in your notes that would	
tell you what else is in it, it being the debris	
piles?	
A. No.	
Q. And you don't independently today	
remember what was in the piles other than metal	

79	81
1 can refresh your memory as to what was in the	
2 debris piles?	
3 A. (Witness viewing document.) Demolition	
4 debris and metal.	
5 Q. And where did you find that, please?	
6 A. The second page of the inspection, site	
7 inspection form.	
8 Q. Okay.	
9 A. Under site exterior portion, debris	
10 piles.	
11 Q. Does that answer what I asked you, do	
12 you think? I asked you if you could find	
13 anything that would refresh your memory as to	
14 what the debris piles were composed of, what is	
15 in them? Circle "Y" I assume means yes, and	
16 then it says, demolition debris, but we knew	
17 that from the first page that you said there was	
18 demolition debris.	
19 My question was, what was in the	
20 pile, not whether or not there was a pile, and	
21 if you could refresh your memory from looking at	
22 your notes as to what the contents of the pile	
23 was?	
24 MR. KERESTER: Objection.	
which you were refreshed on?	
A. I recall wood.	
Q. Anything else that you remember?	
A. That's all that I recall.	
Q. And when you say metal, do you know	
what kind of metal? I don't mean the nature of	
whether it was iron or steel, but what was the	
shape or what was it used for, do you know any	
details about the metal?	
A. I don't recall.	
Q. And with regard to the wood, was it	
wood from roots or from trees, was it finished	
wood and what size was this wood?	
A. I recall it was wood that you would use	
as building materials, but I don't recall sizes.	
Q. Okay. I understand. Now, when you --	
MR. ROBBINS: I'm sorry?	
MR. BRAVERMAN: I'm not going	
to interfere. Go ahead.	
MR. ROBBINS: Did I do	
something wrong?	
MR. BRAVERMAN: No, not at	
all.	
(Discussion held off)	

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82	84	
1	so that 55 should now be complete with all of	
2	the originals, including some color photographs	
3	and a large bound set of documents, which were	
4	tabbed in gray and appear to consist of Phase 1	
5	materials.	
6	Did I state that clearly enough for	
7	everybody's satisfaction, or does anybody want	
8	to add anything?	
9	MISS ENGBERG: No, I think	
10	that's fine.	
11	MR. KERESTER: As I understand	
12	it now, Exhibit 55 contains the original package	
13	that you received, the FedEx delivery from	
14	Goldman in response to the subpoena?	
15	MR. ROBBINS: That's correct,	
16	it now contains everything that I got.	
17	MR. BRAVERMAN: Well, not	
18	quite because you still have the unmarked	
19	original certification from Goldman of the	
20	authenticity of the documents.	
21	MR. ROBBINS: Which previously	
22	we decided was not an important --	
23	MR. KERESTER: Right, with the	
24	limited exception that the single sheet	
83	85	
1	constituting the certification, Exhibit 55 does	
2	now constitute the original of a package that	
3	you received, and 55 also includes a copy of	
4	that certification.	
5	MR. ROBBINS: Correct. Is	
6	counsel satisfied with that, or do we want to	
7	remark the original Certification?	
8	MR. KERESTER: I'm satisfied.	
9	MISS ENGBERG: That's fine	
10	with me.	
11	MR. BRAVERMAN: I have no	
12	interest.	
13	MR. KERESTER: For clarity	
14	purposes, why don't we mark that as 56 just so	
15	there's no doubt about it.	
16	MR. BRAVERMAN: The original	
17	certification. You might need it later, so	
18	that's not a bad idea.	
19	MR. ROBBINS: Works for me.	
20	(Exhibit No. 56 received and	
21	Marked for identification).	
22	BY MR. ROBBINS:	
23	Q. Did you take any photographs yourself	
24	of the Union Street property that you were doing	

22 (Pages 82 to 85)

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<p>1 the Phase 1 on?</p> <p>2 A. Yes.</p> <p>3 Q. Are these the photographs that you took</p> <p>4 in front of you, or copies of them?</p> <p>5 A. Yes.</p> <p>6 Q. And did you take photographs other than</p> <p>7 the six that are contained in those</p> <p>8 reproductions?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 MR. ROBBINS: Let's mark that as</p> <p>12 55B, please.</p> <p>13 (Exhibit No. 55B received and</p> <p>14 Marked for identification).</p> <p>15 Q. Do the originals of these photographs</p> <p>16 still exist someplace?</p> <p>17 A. They were digital photographs.</p> <p>18 Q. So is there -- do the digital files</p> <p>19 representing these files exist someplace?</p> <p>20 A. Yes.</p> <p>21 Q. Where, on Goldman's server?</p> <p>22 MR. KERESTER: I think you</p> <p>23 were provided digital copies of these files.</p> <p>24 MR. ROBBINS: I know I was.</p>	<p>86</p> <p>1 A. Yes.</p> <p>2 Q. Okay. What was your intention of</p> <p>3 putting that phrase in there? Why is that</p> <p>4 there?</p> <p>5 A. The client that had hired us to conduct</p> <p>6 the Phase 1.</p> <p>7 Q. Okay. So would you show me in these --</p> <p>8 and I'll ask you to look at each one in turn --</p> <p>9 the so-called debris piles, the demolition</p> <p>10 debris piles that you were referring to?</p> <p>11 A. Yes.</p> <p>12 Q. Are the pictures numbered in any way to</p> <p>13 distinguish them by a number?</p> <p>14 A. No.</p> <p>15 Q. Okay. We'll see if we have to mark</p> <p>16 anything, but on the first page do you see any</p> <p>17 of the debris that you were referring to before?</p> <p>18 A. The second picture on the first page.</p> <p>19 Q. All right. Does anybody have a problem</p> <p>20 with her marking in the margin the letter "A,"</p> <p>21 let's say?</p> <p>22 MR. KERESTER: No, that's</p> <p>23 fine.</p> <p>24 Q. Just a capital Letter "A" would be</p>
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<p>1 Thank you.</p> <p>2 Q. The descriptions that are typewritten</p> <p>3 underneath the photographs, who put those on</p> <p>4 there?</p> <p>5 A. I did.</p> <p>6 Q. Okay. So you wrote out those</p> <p>7 descriptions?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what is the numbering</p> <p>10 system? At the beginning of the photograph</p> <p>11 there is a number.</p> <p>12 A. That's the job number designated by</p> <p>13 Goldman.</p> <p>14 Q. Which part of that is the job number?</p> <p>15 A. 958-2080.</p> <p>16 Q. And these pictures were taken on May</p> <p>17 2nd?</p> <p>18 A. Yes.</p> <p>19 Q. Did you look at these pictures before</p> <p>20 coming here today?</p> <p>21 A. Yes.</p> <p>22 Q. The first words that you have after the</p> <p>23 filing number says, "Envirotest Laboratories";</p> <p>24 is that right?</p>	<p>87</p> <p>1 fine.</p> <p>2 A. (Witness complying).</p> <p>3 Q. So on Photograph A on this page you</p> <p>4 were pointing to the sort of mound on the center</p> <p>5 of the picture as the debris picture?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see anything in the other</p> <p>8 picture that represents any of the debris piles?</p> <p>9 A. No.</p> <p>10 Q. Okay. would you go to Page 2 of the</p> <p>11 sheets. Would you look at each of the two</p> <p>12 pictures on there and tell me if you see any</p> <p>13 debris piles in either one?</p> <p>14 A. In both of the pictures.</p> <p>15 Q. Would you look at each picture. For</p> <p>16 each of the six pictures, would you identify any</p> <p>17 debris pile that you find shown in the picture</p> <p>18 when you said before when you talked about</p> <p>19 debris with Mr. Gateman?</p> <p>20 A. In the top picture on Page 2.</p> <p>21 Q. Okay. Would you point to where the</p> <p>22 debris is?</p> <p>23 A. (Indicating).</p> <p>24 Q. So you're on the right-hand side of the</p>
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90	1 picture, kind of midway up under some grayish, 2 block looking items? 3 A. Correct. 4 Q. And would you put a letter "B" next to 5 that picture? 6 A. (Witness complying). 7 Q. Thank you. And then the bottom picture 8 on that page? 9 A. Right here (Indicating). 10 Q. Just below the piece of heavy equipment 11 and to the left of the heavy equipment? 12 A. Yes. 13 Q. Okay. Would you put a letter "C" 14 there, please? 15 A. (Witness complying). 16 Q. And if we can go to the third page? 17 A. I don't see any debris piles on the 18 pictures 5 or 6. 19 Q. Okay. Thank you. So when you were 20 referring to debris piles when I was asking you 21 questions a little while ago on this, these 22 pictures, the ones that you've marked, show what 23 you were referring to as debris? 24 MR. KERESTER: Objection to	92 1 Exhibit 55A. 2 Q. What are you reading from? 3 A. It indicates basement foundation 4 remaining and whole being backfilled. 5 Q. Would you point to where you're looking 6 at. Maybe I have the wrong page. 7 A. I don't believe that's the right 8 document. It indicates site inspection. 9 Q. Okay. This is on the May 2nd visit; is 10 that right? 11 A. Yes. 12 Q. Current conditions of site. That's the 13 metal debris sentence there. All debris -- 14 you're talking about the phrase, "All debris 15 pulled out. Basement foundation remaining and 16 hole being backfilled"?
91	1 form. 2 A. It shows a representation of what I 3 observed. 4 Q. Okay. But are you saying that what is 5 shown on those pictures that you have marked may 6 not have been all of the debris that you saw? 7 A. Correct. 8 Q. But it's representative of what you 9 saw? 10 A. I don't recall. I don't recall. There 11 might have been another debris pile of a 12 different material that's not shown in these 13 photos. 14 Q. Okay. Thank you. Did you observe any 15 debris being removed from the site while you 16 were there on this first day, May 2nd, 2002? 17 A. I don't recall. But in reviewing the 18 files maintained in either Exhibit 55 or 55A, 19 based on statements made in some of those 20 documents, it refers to the activity being 21 conducted. 22 Q. Would you show me where you are 23 referring to? 24 A. On the second page of Document 2 in	93 1 this first visit on May 2nd? 2 A. I don't recall. 3 Q. Okay. Did you go back to the site 4 after that first visit? 5 A. No. 6 Q. Have you been back to that site at 7 anytime after May 2, 2002? 8 A. No. 9 Q. Did you ever go back to the City of 10 Lynn in connection with your work at that time 11 to do other research? 12 A. I may have. I don't recall. 13 Q. Okay. Would you have been able to 14 check records of the Fire Department or the 15 Housing Department or any of the places that you 16 say you gathered records from in Lynn without 17 going back there? Is there a way to do that 18 without going back to the city? 19 A. Over the phone, through faxing. 20 Q. Okay. So you could call up some of 21 these city agencies and ask them questions and 22 they would give you the information? 23 A. Correct. 24 Q. So to best of your recollection, the

24 (Pages 90 to 93)

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1 only time you were up to the site was May 2nd of 2 2002? 3 A. To the actual site itself, yes. 4 Q. Are you distinguishing the actual site 5 itself to something else? 6 A. No. When you were referring to Lynn as 7 the city. 8 Q. What I was saying was the site. 9 A. Yes. 10 Q. How long were you at the site on May 11 2nd? 12 A. I don't recall. 13 Q. Well, was it an hour, more than an 14 hour? 15 A. I don't recall. 16 Q. Was it a whole day? 17 A. I don't believe it was a whole day. 18 Q. Okay. How long did you spend with 19 Mr. Gateman and his company? 20 A. I don't recall. 21 Q. An hour, more than an hour, the whole 22 day or as much as the day you stayed up there, 23 were you with him the whole time? 24 A. I don't recall.	94 1 potential of having contamination? 2 A. Yes. 3 Q. If you would look at Page 10 of this 4 report. And before I get to Page 10 -- I'm 5 sorry. I have to ask you if this copy that I 6 have in front of you complete and full as far as 7 the report that was sent to the people at 8 Envirotest? It has different materials 9 throughout it, drawings, field notes. I want to 10 make sure that they all belong to this report? 11 A. Yes. 12 Q. Okay. And that includes the field 13 notes in the back of this report, which are on 14 the Envirotest Laboratory heading. Those are 15 part of it, too? 16 A. Correct. 17 Q. I actually put a flag where they 18 started. 19 A. Those are part of it. 20 Q. So what I have here is a complete 21 package? 22 A. Yes. 23 Q. Okay. Thank you. Were you aware at 24 the time that you started your study on May 2,
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1 Q. Did you have anybody else with you -- 2 A. No. 3 Q. -- from Goldman or any friend or any 4 companion or assistant or whatever? 5 A. No. 6 Q. As a result of that visit on May 2nd 7 and your observations and research, did you 8 issue or write a report dated May 29, 2002? And 9 I'll show you this pile of papers, which was 10 55. 11 A. Yes. 12 Q. And you know it's your report because 13 your signature is at the end; is that right? 14 A. Yes. 15 Q. Did you find any OHM contamination at 16 the site? 17 A. I identified the potential for OHM 18 material to be at the site. 19 Q. Okay. So my question was, did you 20 identify any actual present OHM contamination at 21 the site? 22 A. No. 23 Q. But you did identify, I think you were 24 saying, some conditions that could have the	95 1 '02, that an asbestos abatement had occurred on 2 the property? 3 A. Yes. 4 Q. And that Envirotest had supervised that 5 abatement process? 6 A. Yes. 7 Q. And was part of the work -- Strike 8 that. 9 Before writing your report, did you 10 review all of the field notes that are part of 11 this? I guess you would say it's Appendix E, 12 before writing your report? 13 A. I don't recall. 14 Q. Would that have been your practice to 15 have done that? 16 A. I likely would have looked through 17 them. 18 Q. The abatement work was done sometime 19 between March and April of 2002, right? 20 A. Yes, based on their field notes 21 completed by Envirotest, that's when it was 22 done. 23 Q. Okay. Now, if we could go to Page 10. 24 On Page 10 you have what looks like you created
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25 (Pages 94 to 97)

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08	100
1 a kind of a chart toward the lower half of the 2 page. Do you see that chart?	1 site with no debris -- Strike that. Forget it. 2 Let me ask you to look at Page 16.
3 A. Yes.	3 Again, you have that chart, and then you say
4 Q. It's under Section 2.9.	4 with regard to storage tanks, "Interview with
5 A. Yes.	5 site contact." And your site contact then was
6 Q. And you have a building exterior, yes, 7 no and comments columns. Now, under the first 8 column where it says building exterior, there's 9 the words where there are soil piles or evidence 10 of filling activities. Do you see that?	6 Mr. Gateman?
11 A. Yes.	7 A. Yes.
12 Q. And your answer was yes, there were.	8 Q. Okay. Page 24, please?
13 A. Yes.	9 A. (Witness viewing document.)
14 Q. And then you have some comments, 15 right?	10 Q. This appears to be part of your
16 A. Yes.	11 findings beginning on 23 under solid waste. Do
17 Q. Okay. What is the source of these 18 comments or sources of these comments?	12 you see that?
19 A. The City of Lynn Building Department 20 and conversations with Mr. Gateman.	13 A. Yes.
21 Q. And, again, are these quotations from 22 Mr. Gateman; so you're using his actual words, 23 or is this a summary of your understanding of a 24 particular conversation?	14 Q. Okay. Would you read what you've
99	15 written there, please?
1 A. I don't recall.	16 A. "Piles of solid waste. (Demolition
2 Q. So you could have quoted him. If you 3 quoted him do you think you would have put it in 4 quotes?	17 debris) were observed throughout the site.
5 A. I don't recall.	18 Based on conversations with Mr. Gateman,
6 Q. All right. At the time that you were 7 there, May 2nd, was all of the demolition debris 8 that at least was pictured in 55B, was all of 9 that demolition debris as you pointed out in 10 that picture, had that been removed from the 11 scene?	19 observed piles are scheduled to be removed and
12 Let me start the question again.	20 properly disposed off site by Roberts
13 That was a bad question. Is it fair to say that 14 any demolition debris that was on that property 15 when you saw it on May 2nd, not all of it had 16 been removed from the property at that time?	21 Dismantling and recycling."
17 MR. KERESTER: Objection to 18 form.	22 Q. Did Mr. Gateman ever indicate to you 23 exactly which materials in any observed piles 24 that were scheduled to be removed and disposed
19 MR. BRAVERMAN: I object.	101
20 A. During my site inspection I observed 21 piles of demolition debris.	1 of? Did he specify which materials were being 2 taken out of?
22 Q. Ergo, it wasn't all removed?	3 A. Not that I recall.
23 A. Yes.	4 Q. You don't have any notes to refresh
24 Q. Okay. So you actually never saw the	5 yourself with?
	6 A. No.
	7 Q. Had he indicated which specific
	8 materials were being removed, would it have been
	9 your practice to have included the names of
	10 those materials that he said?
	11 A. Based on my notes I believe it
	12 indicated all material. He indicated all
	13 material.
	14 Q. But he didn't specify what the
	15 materials were that would constitute the all is
	16 my question?
	17 A. I don't recall.
	18 Q. Okay. Had he done that, would it have
	19 been your practice to record the specifics of
	20 what he told you?
	21 MR. KERESTER: Objection to
	22 form.
	23 A. I likely would have noted it if he
	24 specified on specific piles rather than all. I

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1	would have noted the specific piles.	1 March 29 '02. It says field notes on the page.
2	Q. And if he had noted specific kinds of	2 A. (Witness viewing document.)
3	debris, would you have noted that?	3 Q. You've read these field notes, I think
4	A. Likely.	4 you indicated, or you thought you had before
5	Q. Okay. During your site visit did you	5 writing this report?
6	have occasion to walk throughout the site	6 MR. BRAVERMAN: I object.
7	itself?	7 A. I don't recall.
8	A. Yes.	8 Q. You don't recall whether you read them
9	Q. Did you do that?	9 or not?
10	A. Yes.	10 A. I don't recall the timing of when I
11	Q. Did you walk down into the basement,	11 read them.
12	for instance?	12 Q. Have you ever read them?
13	A. I don't recall.	13 A. I've looked through them.
14	Q. So do you recall any places on the site	14 Q. Okay. Is that different than reading
15	that you walked?	15 them? I don't know what you mean.
16	A. I don't recall.	16 A. I've scanned them. I don't know if I
17	Q. Now, on Page 1 of this -- actually,	17 would say I read them word for word.
18	it's the cover letter that accompanies the	18 Q. Okay. Let me back up then and see if I
19	report, that May 29, 2002 letter.	19 can get at it this way.
20	A. Yes.	20 Did whatever contacts you had with
21	Q. Okay.	21 these notes, whether you scanned them or perused
22	(Brief break taken).	22 them or whatever, did anything contained in
23	BY MR. ROBBINS:	23 these field notes from any of the Envirotest
24	Q. After the May 2nd, 2002 visit, did you	24 people form any part of the basis to your May
	103	105
1	ever have any other contact with Mr. Gateman	1 29, 2002 report, Phase 1 report?
2	either live or by telephone or by e-mail or any	2 MR. KERESTER: Objection to
3	other means?	3 form.
4	A. Not that I recall.	4 MR. BRAVERMAN: I object.
5	Q. Okay. I'd like to move for a moment to	5 A. I don't recall.
6	what is in the back, and I actually had put a	6 Q. So you don't recall whether anything
7	little blue tab where the field notes are.	7 that is in your report came from anything in
8	What is your understanding of the	8 these field notes?
9	authorship of these fields notes generally	9 A. Correct, I don't recall.
10	speaking?	10 Q. Is there any way you would be able to
11	MR. BRAVERMAN: I object.	11 determine this other than your memory, your
12	MR. KERESTER: What are you	12 recollection?
13	referring to specifically?	13 A. I don't believe so.
14	MR. ROBBINS: There is a bunch	14 Q. Okay.
15	of field notes by Envirotest people.	15 MR. ROBBINS: I'd like to mark
16	MR. KERESTER: This is	16 this as 55C.
17	appendix E?	17 (Exhibit No. 55C received and
18	MR. ROBBINS: Yes.	18 Marked for identification).
19	Q. Was it your understanding these were	19 Q. We have previously marked as Exhibit 26
20	field notes written by Envirotest people who	20 a report with a cover letter dated February 2,
21	were supervising the asbestos removal?	21 2004 to James Hawkins from Goldman
22	A. Yes.	22 Environmental. It's referred to as a limited
23	Q. Okay. I'd like to draw your attention	23 subsurface investigation. I'd like to show that
24	to a field note that's a few pages in marked	24 to you now, and ask you if you'd take a look at

27 (Pages 102 to 105)

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1 It.
 2 I'd like to know, did you have any
 3 participation in any facet of the creation of
 4 data conclusions or drafting of the report?

5 A. No.

6 Q. Okay. So while you have done -- what
 7 is this limited subsurfacing investigation, is
 8 this a Phase 2 report or a different report yet?

9 A. You could consider it a Phase 2.

10 Q. How do you know that? What is it that
 11 tells you that it's a Phase 2?

12 A. There's subsurface work involved.

13 Q. So Phase 1, no digging of holes; phase
 14 2, dig some holes?

15 A. Typically, yes.

16 Q. Okay.

17 MR. ROBBINS: I have no other
 18 questions then. Thank you.

20 EXAMINATION BY MR. KERESTER:

21 Q. Miss Maigret, I believe as you know my
 22 name is Dale Kester, and I represent the
 23 plaintiff Georto in this case.

24 My understanding from your

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1 related to historical and present activity in
 2 the site include the issue of solid waste?

3 A. Yes.

4 MR. ROBBINS: Objection.

5 Q. And did you take handwritten notes of
 6 your interview with Mr. Gateman?

7 A. Yes.

8 Q. And are those notes contained in
 9 Exhibit 55A?

10 A. Yes.

11 Q. And can you specifically identify
 12 within Exhibit 55A which handwritten notes
 13 related to your interview with Mr. Gateman?

14 A. The document indicated by site
 15 inspection form on Page 1 dated 5/2/02.

16 Q. How many pages does that document
 17 consist of?

18 A. Five.

19 Q. And does that document reflect
 20 information provided to you by Mr. Gateman?

21 A. Yes.

22 Q. And are there any other documents that
 23 reflect your interview with Mr. Gateman?

24 A. Yes.

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1 testimony is that you made a site visit to the
 2 Lynn property on or about May 2nd, 2002; is that
 3 correct?

4 A. Yes.

5 Q. And while you were at the property did
 6 you meet with Mr. William Gateman?

7 A. Yes.

8 Q. And what was your purpose in meeting
 9 with him at that time?

10 A. To conduct a site walk over and an
 11 interview with him.

12 Q. Did you, in fact, interview Mr. Gateman
 13 while you were at the property on that day?

14 A. Yes.

15 Q. What was purpose in doing so?

16 A. To determine his knowledge of the site
 17 in regards to current and historic operations at
 18 the site, if any subsurface investigations had
 19 previously been conducted at the site, if there
 20 had been any activity and use limitations placed
 21 on the site. Basically, to get an understanding
 22 of historic and current activities that had and
 23 were currently occurring at the site.

24 Q. And did the purpose in so far as it

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1 Q. And what, if any, are those?

2 A. The document dated 5/2/02 indicated by
 3 site inspection. 12 o'clock, meet Bill Gateman.

4 Q. And is that document two pages?

5 A. It's three.

6 Q. Three pages?

7 A. Yes.

8 Q. And does that include a diagram as
 9 well?

10 A. Yes.

11 Q. And this three-page document that you
 12 identified that has a date of 5/2/02 on the
 13 first page, does that document reflect your
 14 notes based on your interview of Mr. Gateman?

15 MR. ROBBINS: I object to the
 16 form.

17 Q. Let me rephrase the question. What
 18 does the three-page document reflect?

19 A. It reflects observations I made at the
 20 time of the site inspection and conversations
 21 that I had with Mr. Gateman.

22 Q. Okay. And when did you make those
 23 notes?

24 A. At the time of the site inspection.

28 (Pages 106 to 109)

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1 Q. Okay. Did you do that during the
 2 course of your interview with Mr. Gateman?

3 MR. ROBBINS: Objection.

4 A. Yes.

5 Q. And the three-page document that is
 6 contained within Exhibit 55A, is that a true and
 7 accurate copy of the notes that you made on that
 8 day?

9 A. Yes.

10 Q. Okay. To the best of your knowledge,
 11 did you accurately set forth your observations
 12 and the statements made to you by Mr. Gateman in
 13 those notes?

14 A. Yes.

15 Q. I'd like to direct your attention to
 16 the second page of those notes. At the top of
 17 that page there's a statement that indicates,
 18 quote, "Robert's Dismantling and Recycling is
 19 removing debris off site and filling in hole,
 20 end quote."

21 Have I accurately read your notes?

22 A. Yes.

23 Q. Did you make that statement based on
 24 your observations or based on your interview

1 piles would be removed from the site.

2 Q. And did you make the statement to that
 3 effect in your notes based on a statement made
 4 to you by Mr. Gateman?

5 MR. ROBBINS: Objection.

6 A. I don't recall, but I wouldn't have
 7 formed that opinion without having conversations
 8 with him about that because I wouldn't have
 9 known what the ultimate plans with the debris
 10 piles would be.

11 Q. Did you interview anyone other than
 12 Mr. Gateman on the site on May 2nd?

13 A. No.

14 Q. Directing your attention to the notes
 15 that appear immediately below the reference to
 16 the metal, slash, debris piles, what was the
 17 source of the information that caused you to
 18 make those notations?

19 A. I don't recall. I believe a portion of
 20 it would have been observations.

21 Q. And would any portion of that have been
 22 based on observations with Mr. Gateman to the
 23 best of your recollection?

24 A. I don't recall.

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1 with Mr. Gateman?

2 MR. ROBBINS: Object to the
 3 form.

4 A. I don't recall.

5 Q. What, if any, notes on Page 2 were made
 6 by you on the basis of your conversation with
 7 Mr. Gateman on May 2nd?

8 A. Could you repeat that question?

9 Q. Yes. What, if any, of the notes that
 10 are contained on Page 2 of the three-page
 11 document did you make on May 2nd based on your
 12 interview with Mr. Gateman?

13 A. I don't recall. But based on the
 14 statement, "to Mr. Gateman's knowledge no wells
 15 of any kind on site," that would be based on a
 16 conversation with him. I don't recall the
 17 remaining statements, if they were based on
 18 observations or conversations with Mr. Gateman.

19 Q. Okay. Let me direct your attention to
 20 the words, "current conditions of site."

21 A. Yes.

22 Q. What, if any, conversations did you
 23 have with Mr. Gateman regarding that subject?

24 A. Mr. Gateman indicated that the debris

1 Q. Directing your attention to the first
 2 five pages of Exhibit 55A. It's a document
 3 entitled, "Site inspection form;" is that
 4 correct?

5 A. Yes.

6 Q. And can you tell me what this document
 7 -- what this form is and how it's used?

8 A. It's a form used when conducting Phase
 9 1 investigations. That acts as a reminder of
 10 important questions to ask relevant to a Phase
 11 1.

12 Q. And did you have this form with you on
 13 May 2nd when you interviewed Mr. Gateman?

14 A. Yes.

15 Q. And how, if at all, did you use that
 16 form in connection with your interview with
 17 Mr. Gateman?

18 A. I don't recall.

19 Q. What would have been your ordinary
 20 practice with respect to the use of this form in
 21 conducting a site interview in connection with a
 22 21E, Phase 1 report?

23 MR. ROBBINS: Objection.

24 A. Typically interview the site contact.

29 (Pages 110 to 113)

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1 And as I'm interviewing them, go through the
 2 site inspection form to make sure I'm asking all
 3 of the key questions relevant to a Phase 1.

4 Q. It's your handwriting that appears on
 5 the site inspection form as part of Exhibit 55A;
 6 is that right?

7 A. Yes.

8 Q. And do you recall when you made those
 9 notations on that site inspection form?

10 A. I don't recall.

11 Q. What was your standard practice at that
 12 time with respect to the preparation of the site
 13 inspection form?

14 A. I typically take notes as I'm
 15 interviewing the site contact.

16 Q. Was that your ordinary practice at the
 17 time?

18 A. Yes.

19 Q. Do you have any understanding as to
 20 whether you deviated from that ordinary practice
 21 on the day that you interviewed Mr. Gateman?

22 MR. ROBBINS: Objection.

23 A. Can you repeat the question?

24 Q. Let me rephrase the question.

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1 as contained in 55A, is that a true and accurate
 2 copy of the notations that you made on that day?

3 A. Yes.

4 Q. Okay. What was your purpose in
 5 indicating that information as reflected in that
 6 handwritten notation under the heading current
 7 use? Why did you set forth that use on the site
 8 inspection report?

9 A. Part of a Phase 1 is determining how
 10 solid waste is disposed of at a site.

11 Q. And how does what you just said relate
 12 to the purpose for indicating the notes that you
 13 did under the heading current use?

14 A. The demolition debris piles observed at
 15 the site would have constituted solid waste, and
 16 therefore I would have asked him how are these
 17 piles disposed of.

18 Q. Do you have any understanding as to
 19 whether the existence of solid waste is an
 20 environmental condition?

21 MR. ROBBINS: Objection.

22 MR. BRAVERMAN: I object.

23 A. I'm not sure of what you're asking.

24 Q. Let me move on. Directing your

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1 Actually, let me just move on.

2 Directing your attention to the
 3 first page of the site inspection form,
 4 specifically to the heading of, "current use."
 5 Can you identify, did you make a handwritten
 6 notation indicating, "Quote, per Mr. Gateman,
 7 all will be removed, slash, disposed."

8 A. Yes.

9 Q. And to the best of your recollection,
 10 did you make that notation on or about May 2nd,
 11 2002?

12 A. Yes.

13 Q. And what, if any, significance to you
 14 as you testify today to the words "per
 15 Mr. Gateman" have to do with respect to whether
 16 that was a statement that Mr. Gateman had made
 17 to you or not?

18 A. It would indicate to me that he had
 19 made that statement.

20 Q. To the best of your knowledge, did you
 21 accurately set forth the statement that he had
 22 made to you under the heading current use?

23 A. Yes.

24 Q. And the five page site inspection form

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1 attention to Page 2, and specifically to the
 2 section entitled, "site exterior."

3 How does the information that's
 4 reflected under the heading site exterior relate
 5 to the Phase 1 – let me rephrase the question.
 6 What is your purpose with respect to setting
 7 forth the information that is reflected in the
 8 heading site exterior?

9 A. Part of the Phase 1 is describing how
 10 the site is currently used. Part of that is a
 11 site description of how the site currently
 12 appears.

13 Q. And if I could direct your attention to
 14 the line item, "Debris piles." It has a "Y" and
 15 an "N" next to it; is that correct?

16 A. Yes.

17 Q. And is that to indicate whether or not
 18 there are debris piles present on a site?

19 A. Yes.

20 Q. Why is that information relevant, if at
 21 all, to the preparation of the Phase 1 report?

22 A. Materials contained in a debris pile if
 23 they were present at the site could be
 24 constituted as a recognized environmental

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<p>1 condition.</p> <p>2 Q. As part of the process of preparing the</p> <p>3 21E report for the Lynn property, did you</p> <p>4 contact any officials from the City of Lynn?</p> <p>5 A. Yes.</p> <p>6 Q. And what was your purpose in doing so?</p> <p>7 A. To determine if they had any files</p> <p>8 relating to the site.</p> <p>9 Q. Did you, in fact, request that some</p> <p>10 files be provided to you?</p> <p>11 A. I don't recall, but that would be the</p> <p>12 standard practice.</p> <p>13 Q. Okay. Directing your attention to</p> <p>14 Exhibit 55, does that exhibit contain any</p> <p>15 information that you received or any files that</p> <p>16 you received from the City of Lynn? I don't</p> <p>17 believe it was 55A, but rather the remainder of</p> <p>18 55.</p> <p>19 A. Yes.</p> <p>20 Q. And where are you pointing to?</p> <p>21 A. Within Appendix D.</p> <p>22 Q. Which is part of the environmental</p> <p>23 report?</p> <p>24 A. Yes.</p>	<p>1 Q. To the best of your recollection,</p> <p>2 Exhibit 55D, is that a true and accurate copy of</p> <p>3 a document that you received from the City of</p> <p>4 Lynn in response to a request for files or</p> <p>5 information that you made to them?</p> <p>6 A. It was either a copy that they provided</p> <p>7 or that I made a copy when I went in to review</p> <p>8 their files.</p> <p>9 Q. I'd like to direct your attention to</p> <p>10 the Phase 1 report, which I believe has been</p> <p>11 marked as Exhibit 55C.</p> <p>12 A. (Witness viewing document.)</p> <p>13 Q. Specifically if I direct your attention</p> <p>14 to Page 4. I'd like to direct your attention to</p> <p>15 the Paragraph 2.41, and the second to last</p> <p>16 sentence of that first paragraph that begins</p> <p>17 with, "Based on." Could you read that into the</p> <p>18 record, please.</p> <p>19 A. Based on conversations with</p> <p>20 Mr. Gateman, all demolition, debris, has been or</p> <p>21 will be hauled off site by Roberts Dismantling</p> <p>22 and Recycling."</p> <p>23 Q. To the best of your recollection, does</p> <p>24 that statement accurately reflect statements</p>

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<p>1 Q. Okay. Aside from the environmental</p> <p>2 report, do the documents that consist of Exhibit</p> <p>3 55 contain any other files that you received</p> <p>4 from the City of Lynn? I'll direct your</p> <p>5 attention to the original file materials.</p> <p>6 A. Yes.</p> <p>7 Q. And what are you pointing to now?</p> <p>8 A. The documentation from the Lynn Fire</p> <p>9 Department.</p> <p>10 Q. And are there any other documents in</p> <p>11 addition to that?</p> <p>12 A. I think it's the same document. A</p> <p>13 document on Building Department letterhead.</p> <p>14 Q. What is the date of that document?</p> <p>15 A. March 4th, 2002.</p> <p>16 Q. And is that the document that you're</p> <p>17 referring to now, is that a copy of the document</p> <p>18 that you received from the City of Lynn to the</p> <p>19 best of your recollection?</p> <p>20 A. To the best of my recollection.</p> <p>21 MR. KERESTER: I'd like to</p> <p>22 mark that page as Exhibit 55D.</p> <p>23 (Exhibit No. 55D received and</p> <p>24 Marked for identification).</p>	<p>1 made to you by Mr. Gateman?</p> <p>2 MR. ROBBINS: I object to the</p> <p>3 form.</p> <p>4 A. Yes, based on my filed notes.</p> <p>5 Q. Directing your attention to Page 10,</p> <p>6 and in particular to the lower right-hand corner</p> <p>7 of the chart that appears at the bottom of that</p> <p>8 page, can you read the sentence into the record</p> <p>9 that begins with, "Based on"?</p> <p>10 A. The second one?</p> <p>11 Q. Correct.</p> <p>12 A. "Based on conversations with</p> <p>13 Mr. Gateman, during the demolition of the site</p> <p>14 building, asbestos abatement activities were</p> <p>15 conducted."</p> <p>16 Q. Can you read the follow-up sentence,</p> <p>17 too?</p> <p>18 A. "Mr. Gateman stated that all building</p> <p>19 materials containing asbestos were removed from</p> <p>20 the site and disposed of off site."</p> <p>21 Q. The following sentence as well?</p> <p>22 A. "Additionally, all demolition debris</p> <p>23 was hauled off site or is in the process of</p> <p>24 being hauled off site for proper disposal."</p>

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1 Q. And what was your purpose in setting
 2 forth that information in the 21E report?
 3 A. To indicate how the demolition debris,
 4 which would be considered solid waste, was going
 5 to be disposed of from the site.
 6 Q. And in the event that it was your
 7 understanding that the demolition debris would
 8 remain on the site, how would that impact your
 9 findings that you set forth in the 21E, Phase 1
 10 report?

11 A. We would have recommended that the
 12 demolition debris piles be removed and properly
 13 disposed of off site.

14 Q. And why is that?

15 A. It would have been considered an
 16 environmentally recognized condition.

17 Q. Directing your attention to Page 23.
 18 At the top of the page there's a heading,
 19 "Findings;" is that correct?

20 A. Yes.

21 Q. And can you read the last sentence of
 22 the paragraph before we get to the bulleted
 23 items?

24 A. "Following is a summary of known or

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1 that appears under the heading, "solid waste,"
 2 what was that source of that information?
 3 A. Conversations with Mr. Gateman.
 4 Q. And to the best of your knowledge, does
 5 that sentence accurately reflect statements made
 6 to you by Mr. Gateman on or about May 2nd, 2002?

7 MR. ROBBINS: Objection.

8 A. Yes, based on my field notes.

9 Q. Okay. Have you had the opportunity to
 10 review the 21E, Phase 1 report that's been
 11 marked as Exhibit 55C since the date that you
 12 prepared it?

13 A. Yes.

14 Q. And, in fact, did you prepare it on or
 15 about -- let me rephrase.

16 Did you complete the report on or
 17 about May 29, 2002?

18 A. Yes.

19 Q. And based on your subsequent review of
 20 the report, have you identified whether you
 21 inaccurately set forth any information provided
 22 to you by Mr. Gateman?

23 MR. ROBBINS: Objection.

24 Q. Let me rephrase the question. To the

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1 suspect environmental conditions associated with
 2 the property".

3 Q. Okay. did you, in fact, then on Page
 4 23 and Page 24 set forth a known or suspect
 5 environmental condition associated with the
 6 property?

7 A. Yes.

8 Q. Okay. Directing your attention to Page
 9 24 what, if any, findings did you make regarding
 10 known or suspect environmental conditions at the
 11 property in connection with the issue of solid
 12 waste?

13 A. We stated -- the report states, "Piles
 14 of solid waste (demolition debris) were observed
 15 throughout the site. Based on conversations
 16 with Mr. Gateman, observed piles are scheduled
 17 to be removed and properly disposed off site by
 18 Robert's Dismantling and Recycling."

19 Q. What was your purpose in using the
 20 words, quote, "based on conversations with
 21 Mr. Gateman." End quote.

22 A. To indicate where the knowledge of how
 23 the solid waste would be disposed of come from.

24 Q. So with respect to the second sentence

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1 best of your knowledge, did you accurately set
 2 forth -- Strike that.

3 Approximately how many times have
 4 you reviewed the reports since you completed the
 5 preparation on or about May 29, 2002?

6 A. Two or three.

7 Q. And based on those reviews, have you
 8 made any determination as to whether you
 9 erroneously set forth any information in the
 10 report?

11 MR. ROBBINS: Objection.

12 A. No.

13 Q. No, you haven't made any determination,
 14 or, no, you're not aware of having made any
 15 erroneous --

16 A. I'm not aware of having made any
 17 erroneous statements.

18 Q. Directing your attention to Page 20 of
 19 the report. Approximately in the middle of the
 20 page in the lower right-hand corner of that
 21 chart under the heading, "Description." Can you
 22 read that entry. This is on the lower right-
 23 hand corner.

24 A. "The site is currently undergoing

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<p style="text-align: center;">126</p> <p>1 filling and regrading. Robert's Dismantling and 2 Recycling is currently transporting fill dirt 3 onto the site to fill in the former basement 4 areas to even out the grade of the site."</p> <p>5 Q. What was your understanding at the time 6 that you completed this report in terms of what, 7 if anything, was going to be filled into the 8 former basement area of the -- what, if 9 anything, was your understanding as to what 10 would be filled into the former basement area on 11 the site?</p> <p>12 A. Clean fill.</p> <p>13 Q. And what was the source of that 14 understanding?</p> <p>15 A. Conversations with Mr. Gateman and 16 observations made at the site.</p> <p>17 Q. At the time that you completed the 18 report, what was your understanding as to 19 whether the demolition debris would or would not 20 be removed?</p> <p>21 A. My understanding is that the demolition 22 debris would be removed.</p> <p>23 Q. Did you have any understanding at that 24 time that any demolition debris would remain on</p>	<p style="text-align: center;">128</p> <p>1 hazardous waste; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. I believe you were also questioned 4 about the existence of regulations concerning 5 the regulations of hazardous waste; is that 6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is it your understanding that, in fact, 9 there are regulations set forth by the 10 Massachusetts Department of Environmental 11 Protection regarding hazardous waste?</p> <p>12 A. Yes.</p> <p>13 Q. And that's your area of specialization 14 and expertise; is that correct, at least some 15 portion of that?</p> <p>16 MR. ROBBINS: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. Are you aware of whether there are also 19 regulations promulgated by the Massachusetts 20 Department of Environmental Protection regarding 21 solid waste?</p> <p>22 A. Yes.</p> <p>23 Q. And is it your understanding that those 24 are different sets of regulations?</p>
<p style="text-align: center;">127</p> <p>1 the site?</p> <p>2 A. Based on my notes, no.</p> <p>3 Q. Would you have indicated that type of 4 information in your Reports if that, in fact, 5 had been your understanding?</p> <p>6 A. Yes.</p> <p>7 Q. Did Mr. Gateman make any statement to 8 you that any of the demolition debris would 9 remain on the site?</p> <p>10 A. I don't recall.</p> <p>11 Q. To the extent that he had made any such 12 statement, what would your ordinary practice 13 have been with respect to setting forth such 14 information in your notes?</p> <p>15 A. I would have indicated in my notes what 16 debris piles were slated to remain on the site 17 versus what piles were slated to be disposed off 18 the site.</p> <p>19 Q. And did you make any notations in your 20 notes indicating that any of the demolition 21 debris was going to remain on the site?</p> <p>22 A. No.</p> <p>23 Q. I believe you were questioned earlier 24 by Mr. Robbins concerning the subject of</p>	<p style="text-align: center;">129</p> <p>1 A. Yes.</p> <p>2 MR. KERESTER: I have no 3 further questions. Thank you.</p> <p style="text-align: center;">* * *</p> <p>EXAMINATION BY MISS ENGBERG:</p> <p>Q. Hi, my name is Kristina Engberg, and I represent Robert's Dismantling and Recycling.</p> <p>A. Hi.</p> <p>Q. During your work at Goldman, or as part of your work at Goldman, do you asses soil borings?</p> <p>A. Yes.</p> <p>Q. During the soil boring process, sometimes are those borings refused?</p> <p>A. Yes.</p> <p>Q. And what does that mean?</p> <p>MR. BRAVERMAN: I object. Answer it if you can.</p> <p>A. It could mean many different things. It all depends on the type of drilling apparatus that you're using. You could be hitting a cobble. You could be hitting bedrock. You could be in tight fill and the drilling equipment that you're using just doesn't have</p>

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1 the power to go through it. It could mean
 2 numerous things.
 3 Q. And how would you go about determining
 4 why a particular boring was refused?
 5 A. You could attempt to install additional
 6 borings in the general vicinity of where you
 7 encountered refusal to see if you get deeper
 8 than the depth where you had hit refusal.
 9 You might infer that you had hit a
 10 cobble. If you continue to hit refusal at the
 11 same depth, you could be hitting bedrock or you
 12 could just be in a tight material that the drill
 13 apparatus doesn't have the capability of
 14 drilling through.
 15 Q. Is that something that's typically done
 16 in installing other borings in the vicinity?
 17 A. It depends on the scope of work.
 18 Q. And you've referred to cobble. What is
 19 that?
 20 A. A large rock.
 21 Q. During the course of your Phase 1
 22 investigation, did you ever have any
 23 conversations with anybody from Robert's
 24 Trucking?

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1 Photograph A, based on the description, it
 2 indicates in the middle portion of the site; so
 3 I would say that.
 4 Q. Is that the determinant used, middle
 5 portion?
 6 A. Middle portion.
 7 Q. Does that identify the area for you?
 8 A. Based on that description, I would say
 9 it would be in the middle of the property.
 10 Q. Okay. I understand. But independently
 11 you don't recognize what you see and say, oh,
 12 yeah, I remember that, that was here?
 13 A. I don't recall where I was standing
 14 when I took the photo, no.
 15 Q. And you don't recall -- actually, I
 16 wasn't asking you so much where you were
 17 standing as what you're seeing.
 18 A. Right. I don't recall that either.
 19 Q. Okay. Could we look at the next
 20 letter, please?
 21 A. Can I refer to a different figure just
 22 to make sure that I'm orienting this correctly?
 23 Q. Whatever you need to refer to.
 24 A. (Witness viewing document).

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1 A. Not that I recall.
 2 MISS ENGBERG: That's all I
 3 have. Thank you.
 4 MR. ROBBINS: I actually have a
 5 couple of follow ups.
 6 * * *
 7 EXAMINATION BY MR. ROBBINS:
 8 Q. I'd like to show you a map or a plan,
 9 and ask you if you recognize what it shows?
 10 A. I believe it's the site of 190 to 200
 11 Union Street.
 12 Q. Okay. I believe you're right. When
 13 you were there, were there any buildings on the
 14 property?
 15 A. No.
 16 Q. Do you know from the photographs,
 17 Exhibit 55B, can you by looking at each of these
 18 photographs, can you -- actually, by looking at
 19 the ones that you've marked, the A, B, C
 20 photographs, can you look at each one in turn
 21 and tell me in reference to this plan what your
 22 memory is or the description. If it helps you,
 23 of what that photograph depicts on the plan?
 24 A. (Witness viewing document.) In

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1 Q. You're looking at something in Exhibit
 2 55 to help orient you south to north?
 3 A. Yes.
 4 Q. Okay.
 5 A. Picture B is looking in this general
 6 vicinity of the site.
 7 Q. Okay. And what makes you say that? Is
 8 that based on memory or based on some
 9 reasoning?
 10 A. Indicating the south west portion of
 11 the site.
 12 Q. And by what you've looked at, you feel
 13 that the area of this plan that represents the
 14 south west portion of the site is up in the --
 15 as you're standing on Union Street and facing
 16 the property, it would be the lower right corner
 17 where Lot C is written?
 18 A. Yes.
 19 Q. In a moment I'll ask you to draw a
 20 circle. Could you look at the next photograph
 21 that you had marked a letter on.
 22 A. Letter C. Somewhere in this area of
 23 the site.
 24 Q. Okay. And you put your finger in a

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1 certain area. How come you're focused on that 2 area? Is that because you remember that's where 3 the stuff was, or are you reasoning it out? 4 A. I'm mostly reasoning it out. 5 Q. Based on what then? 6 A. In Picture C behind the large piece of 7 equipment a building wall is visible, which is 8 also visible in Picture B; so based on that and 9 the description that indicates looking west from 10 the east boundary. 11 Q. Which would be the east boundary? 12 A. This would be the east boundary, and 13 that would be the west boundary (Indicating). 14 Q. In other words, Union Street would be 15 on the western side of the property, and I don't 16 know what this other street is. It's cut off. 17 A. It's cut off. 18 Q. But the other one where it says "S 19 Street," not the name, but that would be the 20 eastern boundary of the property? 21 A. Correct. 22 Q. So School Street up at the top would be 23 the northern edge? 24 A. Correct.	1 seeing? I'm not asking what direction you're 2 looking. I'm asking what portion is visible in 3 the picture? 4 A. Maybe from -- it's hard to tell, but 5 from somewhere from here to there. 6 Q. Okay. Would you put your best estimate 7 as to what that is showing? 8 A. Okay. 9 Q. Again, in the portion of the ground. 10 I'm not talking about the direction. 11 A. Right. (Witness complying). 12 Q. Okay. And would you write in there 13 Photo C? 14 A. (Witness complying). 15 Q. And then would you draw another shape 16 to represent the area of the ground depicted in 17 Photo B, which we talked about before but we 18 didn't draw? 19 A. (Witness complying). 20 Q. And if you'd label that Photo B, 21 please? 22 A. (Witness complying). 23 Q. Can you sign this and date this today 24 as the 18th so we know it's yours?
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1 Q. So this Photograph C description, is it 2 saying it's located where now? 3 A. Looking west from the east boundary. 4 Q. So it's looking from the sort of S 5 Street that we're calling towards Union Street? 6 A. Toward Union Street. 7 Q. Okay. I understand that. 8 A. Just by reasoning it out and looking at 9 the photos, it looks like I was on the northern 10 portion of the east side of the site. 11 Q. Okay. And photographing looking in the 12 direction of Union Street? 13 A. Correct. 14 Q. And so where on here would you put your 15 finger again as to where you feel Picture C 16 shows? 17 A. A large portion. It would show this 18 whole vicinity of the site. 19 Q. Okay. May I just see it for a second, 20 please? We're talking about the same picture. 21 Picture C shows a big machine, a big yellow 22 machine? 23 A. Yes. 24 Q. So what of the ground are you actually	1 A. (Witness complying). (Exhibit No. 57 received and Marked for identification). 4 Q. Do you have any memory other than the 5 pictures that you've indicated A, B and C that 6 we have here, and we further plotted on the map 7 here on this plan, do you have any independent 8 memory of seeing any other debris piles on the 9 property? 10 A. I don't recall. 11 Q. Okay. So you don't recall whether you 12 saw any debris piles or not? 13 A. Correct. 14 Q. Did Mr. Galeman at any point say that 15 he was removing the leftover brick from the 16 building off property, specifically talking 17 about brick? 18 A. I don't recall. 19 Q. Okay. Did he ever say he was removing 20 any leftover concrete from the building that was 21 demolished? 22 A. I don't recall. 23 MR. KERESTER: Objection to form. 24 Q. Had he told you I'm removing

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1	1 CERTIFICATE
2	2 I, LAUREN McKINLAY, do hereby certify
3	3 that I have read the foregoing transcript of my
4	4 testimony, and further certify that it is a true
5	5 and accurate record of my testimony (with the
6	6 exception of the corrections listed below):
7	7 Page Line Correction
8	8 _____
9	9 _____
10	10 _____
11	11 _____
12	12 _____
13	13 _____
14	14 _____
15	15 _____
16	16 _____
17	17 _____
18	18 _____
19	19 Signed under the pains and penalties of perjury
20	20 this
21	21 _____ day of _____, 2005.
22	22 _____
23	23 _____
24	24 LAUREN McKINLAY
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1	1 COMMONWEALTH OF MASSACHUSETTS
2	2 SUFFOLK, SS.
3	3
4	4 I, Tara L. Wosny, Certified Shorthand
5	5 Reporter and Notary Public in and for the
6	6 Commonwealth of Massachusetts, do hereby certify
7	7 that LAUREN McKINLAY, the witness whose
8	8 deposition is herein before set forth, was duly
9	9 sworn by me and that such deposition is a true
10	10 record, to the best of my ability, of the
11	11 testimony given by the witness.
12	12 I further certify that I am neither related
13	13 to or employed by any of the parties in or
14	14 counsel to this action, nor am I financially
15	15 interested in the outcome of this action.
16	16 In witness whereof, I have hereunto set my
17	17 hand and seal this 23rd day of November, 2005.
18	18
19	19 Notary Public
20	20 My commission expires:
21	21 June 10, 2009

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